S. HRG. 99-587

NOMINATIONS OF J.H. TYLER McCONNELL, ROBERT SETRAKIAN, AND BARRY D. SCHREIBER

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF J.H. TYLER McCONNELL, ROBERT SETRAKIAN, AND BARRY D. SCHREIBER TO BE MEMBERS OF THE BOARD OF GOVERNORS OF THE U.S. POSTAL SERVICE

DECEMBER 13, 1985

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THE NOMINATIONS OF J.H. TYLER McCONNELL, ROBERT SETRAKIAN, AND BARRY D. SCHREIBER

FRIDAY, DECEMBER 13, 1985

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The committee met at 10:13 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Theodore F. Stevens presiding.

Present: Senators Roth, Stevens, Cohen, and Eagleton.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS [presiding]. Good morning. I am sorry to be late. I was involved in a conference in another committee. I would like to put my opening statement in the record.

[Senator Stevens prepared statement follows:]

PREPARED STATEMENT OF SENATOR STEVENS

Good morning. We are here this morning to hear from and ask questions of three nominees to the Board of Governors of the U.S. Postal Service. These nominees bring a wealth of experience and knowledge and talent to that Board. That is as it should be.

The U.S. Postal Service is facing increasingly difficult times due to Federal budget requirements which may result in additional financial burdens on the Postal Service. In addition, the Postal Service management will be faced with another labor contract to negotiate and sign before the end of 1987. I don't envy the task of the nominees.

Yet, I do want to take this opportunity to remind everyone that for all practical purposes the U.S. Postal Service is self-sufficient and has been so for the past several years. This makes the Board members' task both more important and difficult. I commend you gentlemen for your willingness to serve the public in these very important positions.

Committee rules require that the committee conduct an inquiry into nominee's experience, qualifications, suitability, and integrity to serve in the position for which he or she has been nominated. I will take the time to very briefly recount for the record the steps that the committee has taken on each of these nominations prior to our hearing today.

First, the nominees have been asked for and have cooperated in supplying financial statements and detailed information on their education, employment, and professional achievements. They have responded in writing to a number of prehearing questions.

Copies of the biographical information and the prehearing question responses will be placed in the record as a part of this hearing and are available upon request. The financial statements are available for inspection by the public in the committee office.

The committee reviewed each nominee's biographical and financial information as well as reports submitted by the Office of Government Ethics. The committee also requested conflict of interest opinions from the general counsel of the U.S. Postal Service. Following that, acting as the chairman of the committee, I reviewed the

FBI report prepared on each nominee. Those reports have also been reviewed by the ranking minority member, Senator Eagleton.

I will place in the record the pertinent section of the law, 39 U.S.C. section 202(a), dealing with the Board of Governors.

Under committee rules I am required to administer the oath to you. Will you please stand and raise your right hands.

Do you swear that your testimony and the statements that you make will be the truth, the whole truth, and nothing but the truth, so help you God?

Senator STEVENS. I am pleased to see that the chairman of the committee and Senator Hawkins are here to present the nominees.

Are all three nominees here? Under the rules, we are required to administer oaths to nominees before this committee. So I ask that all three of you stand and raise your right hands.

Do you swear the testimony you are about to give and the statements you will make to be the truth, the whole truth and nothing but the truth, so help you God?

Mr. MCCONNELL. I do.

Mr. SETRAKIAN. I do.

Mr. SCHREIBER. I do.

Senator STEVENS. Do you have a comment, Senator? I placed my opening statement in the record already.

OPENING STATEMENT OF SENATOR EAGLETON

Senator EAGLETON. I do have an opening statement, Mr. Chairman, that I think will serve as perhaps a useful background to today's hearing because it is an important hearing.

We are here to consider three nominations to the U.S. Postal Service Board of Governors. The Postal Reorganization Act of 1970 vests direction of the Postal Service in an 11-member Board of Governors. Nine members of the Board are appointed by the President on a bipartisan basis with the advice and consent of the Senate. The 9 Governors select the Postmaster General who becomes the 10th member of the Board and they, in turn, choose the 11th member, the Deputy Postmaster.

While the Postmaster General is the chief executive officer of the U.S. Postal Service and is charged with managing the daily operations of the Postal Service, the Board of Governors directs and controls the expenditures of the Postal Service, it reviews its practices and policies, and it establishes basic objectives and long-range goals. Each Governor receives a salary of $10,000 a year, paid out of the Federal Treasury, plus $300 per day for each day of meetings, paid out of the Federal Treasury, not to exceed 30 days. He is also reimbursed out of the Federal Treasury for his travel expenses.

The functions of the Board of Governors are many. It approves postal rate and mail classification changes; it chooses the Postmaster General; it approves capital investment projects of over $5 million; it ensures that competent executives are available for top management positions and it improves the hiring of senior-level postal officials; it issues policy guidelines for collective bargaining, and it gives broad policy direction, especially in the area of strategic planning and resources allocation.

Just for example, in fiscal year 1984, the Postal Service Board of Governors directed postal management to dispose all E-COM service equipment through sale or leasing to one or more private sector

firms. It also decided that the proposed source time and attendance reporting system, called STARS, was too expensive to implement, and it terminated that project. I understand, however, that the Board has approved a less costly timekeeping system this year.

The National Academy of Public Administration issued a report in 1982 entitled, "The Evaluation of the United States Postal Service." Their panel of experts concluded that each administration ought to promptly fill Board vacancies "with individuals whose qualifications reflect the high importance of this largest of civil Government agencies."

Now, this brings me to a point which I wish to emphasize today: the U.S. Postal Service is a bona fide Federal agency. United States Code, title 39, section 201, states, "There is established as an independent establishment of the Executive Branch of the Government of the United States the United States Postal Service."

The remainder of the United States Code, title 39, 537 states, on certain pages, the Federal laws that govern this Federal body. Mr. Chairman, I would note that the Postal Service is second in size only to the Defense Department. Its employees—there are 712,000 of them—participate in the civil service retirement system; they participate in the Federal Employee Health Benefits Program. Pay checks are issued on Treasury stock paper, just as is the salary and the reimbursement for per diem.

Further, a Postal employee may transfer into another Federal agency and have his length of postal service be counted toward civil service retirement.

Under the Postal Reorganization Act, the Justice Department is charged with handling its legal cases.

Finally, Mr. Chairman, I would again like to reference the National Academy of Public Administration Postal Service report previously mentioned. That report concluded that the Governors, and we are considering three nominees here today, most of them career professionals from fields outside of the U.S. Postal Service, exert an important influence on the professional postal leadership. Their deliberations help shape the way in which postal professionals approach their responsibilities.

Therefore, while I feel that Congress wisely established the Board of Governors to serve as representatives of the American people, I feel that it is incumbent upon Congress to confirm to those positions only those individuals who demonstrate the utmost integrity, ability, commitment, and ethical standards above suspicion.

Since the three gentlemen before us today also represent the Democratic Party and have been selected to fill the so-called Democratic slots of the Postal Board of Governors, I, as the ranking Democrat on the committee, take a particular interest in ensuring that they are representatives of the very best of my party, and I repeat that they are men of integrity, ability, commitment and ethical standards above suspicion.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much.

Senator Roth.

OPENING STATEMENT OF CHAIRMAN ROTH

Chairman ROTH. Senator Stevens, first let me thank you for being here this morning. I know you have other commitments that made it extraordinarily difficult, but I was anxious to have the opportunity to introduce the first nominee for the Board of Governors of the Post Office.

I can think of no man or woman better qualified from background, performance, or ethical conduct than Tyler McConnell. Now, I will start out by admitting he has a been a longtime personal friend and associate, and that was the reason I was anxious to have you here to chair, and as I said earlier, I appreciate that.

I have several pages here, Mr. Chairman, that outline in detail the many accomplishments of this man. He has been a leader, a leader in business and in financial centers. He has been a leader in the Democratic Party of the State of Delaware. As a matter of fact, he was the Democratic nominee for Governor back in the 1950's and ran ahead of his ticket and came very close to beating a man that was thought to be unbeatable, Caleb Boggs, whom, Tom Eagleton, you know well.

He has served in many capacities in public life. He was first commissioner and later chairman of the Delaware State Highway Department. He also had the very responsible job of being the civilian aide to Secretary of the Army. He served as the first chairman of the joint compact between Delaware and New Jersey for building and operating all bridge and ferry crossings between the State of Delaware and New Jersey, a most important job at home.

As I said, he has been a business and financial leader of the community. When I first became associated with him, we were both lawyers. He was assistant general counsel, and I was just a law clerk at Hercules Powder Co. He was later to rise to be a member of the board of directors and secretary. For many years, he served as chairman, and chief executive officer of the Delaware Trust, a major bank of my State.

He has been honored many times by many different groups. For example, the American Jewish Committee presented its Institute of Human Relations award to J.H. Tyler McConnell in 1982.

The Department of the Army gave its Outstanding Civilian Service Medal for being the civilian aide to the Secretary of the Army. I could go on and name many others, such as the Flame of Life Award by the National Safety Council.

But as I listened to you, Tom, reading the many requirements of a nominee both ethical, moral, and professional, I am proud to present a man that pre-eminently meets all these requirements.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much, Senator.

Mr. McConnell, we are going to ask you to defer so that we can listen to the statement of Senator Hawkins, and then we will proceed with the nominees, if that is agreeable to you.

Senator Hawkins.

TESTIMONY OF HON. PAULA HAWKINS, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HAWKINS. Thank you, Mr. Chairman. I first would like to read, with your permission, a letter from Claude Pepper, who called and asked that I read this since he was unable to attend.

Dear Mr. Chairman, allow me to bring to your kind attention the pending nomination of the Honorable Barry E. Schreiber, Commissioner, Dade County, Florida, for a seat on the Board of Governors of the United States Postal Service. Commissioner Schreiber has very ably and with remarkable accomplishment served as the Commissioner of Dade County, Florida, my home county, since 1976.

My experience with Barry precedes this period, as I knew him in earlier years when he made a brilliant record in Dade County in the State of Florida as a lawyer. In addition, he's always shown an astute and genuine concern for the public interest.

He has been an outstanding leader in various civic and charitable organizations such as the greater Miami Jewish Federation, where he served as a Board Member, B'nai B'rith, the American Zionist Federation of South Florida, whose president he is, and the Dade League of Cities, where he serves as Secretary to the Dade County league of cities. His awards, including an Honorary Doctorate in Humane Letters from Heed University. his being choosen outstanding young man of America in 1977, the coveted and prestegious Yeshiva Technical University Heritage award and the recent American Police Hall of Fame Honor Award are too numerous to list, and they testify to the duration and the depth of Barry's personal commitment.

Your favorable consideration of him would be very much appreciated by me. I know he would serve well and honorably and with his great talent, help maintain excellence in the Postal Service for our nation during his tenure.

Thank you for your consideration.

With kind regards, Claude Pepper.

Claude Pepper, as you understand, is the dean of the House.

Mr. Chairman, I am here this morning to testify on the pending appointment of Barry D. Schreiber, a very close friend of mine, to the Board of Governors of the U.S. Postal Service. His excellent qualifications are worthy, and his worthy character provide every reason to accept and to applaud his nomination.

Commissioner Schreiber's ample experience would be a valuable attribute to the Board of Governors. He has been a commissioner of Dade County, FL, since 1976. He was the youngest commissioner ever elected in cur history. He was reelected without opposition in 1976. That is quite an accomplishment, the first time in 10 years any commissioner has been unopposed during an election.

In 1982, he was reelected, hands down, by a 2-to-1 margin. Let me point out that Dade County has the largest home rule county charter in the United States of America. It has a population of 1.8 million people, with an operating budget of $1.2 billion. As an executive officer of the county government, his experience would lend well to an executive position within the Postmaster General operations.

Finally, I ask you to consider Commissioner Schreiber's extensive community involvement and accomplishments. His commitment to the public interest is reflected by the very lengthy list of awards. His distinguished leadership and character certainly make him fit to do an exceptional job on the Board of Governors.

He has made so many valuable contributions to Dade County, and Florida, that I know he will do the same for the U.S. Postal Service. I say to his good wife and three children, who are with him here today, that this man has always had his priorities in the

right order, a very dedicated family man, a very faithful man, and a public servant, in that order.

I urge this committee to approve Barry Schreiber's appointment to the U.S. Postal Service Board of Governors, and I thank you.

Senator STEVENS. Thank you very much, Senator.

Senator EAGLETON. I have no questions.

Senator STEVENS. Thank you very much. I appreciate that.

TESTIMONY OF J.H. TYLER McCONNELL, A NOMINEE TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE U. S. POSTAL SERVICE

Senator STEVENS. Mr. McConnell, let me ask you the questions that must be asked all witnesses.

Is there anything you are aware of in your background which might present a conflict of interest in fulfilling the duties of the office to which you have been nominated?

Mr. MCCONNELL. No, sir.

Senator STEVENS. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. MCCONNELL. I do not.

Senator STEVENS. If you are confirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Mr. MCCONNELL. I do.

Senator STEVENS. Thank you very much. I appreciate your courtesy.

I don't have any further questions. Do you have any questions?

Senator COHEN. No.

Senator STEVENS. Do you have any questions of Mr. McConnell?

Senator EAGLETON. Senator Cohen.

Senator COHEN. No, I have no questions.

Chairman ROTH. No.

Senator EAGLETON. Mr. McConnell, you are being appointed by the President as a Democratic nominee, so to speak, to serve on the Postal Board of Governors, and I would like to establish for the record your Democratic credentials.

As Senator Roth pointed out, you were, in fact, the Democratic nominee for Governor of the State of Delaware. What year was that?

Mr. MCCONNELL. 1956.

Senator EAGLETON. 1956. I think I heard Senator Roth say, were you chairman of the Delaware Highway Commission?

Mr. MCCONNELL. I was.

Senator EAGLETON. When was that?

Mr. MCCONNELL. I was a commissioner in the period betwen 1948 and 1953 and was chairman of the Commission during the latter portion of my term.

Senator EAGLETON. Is that, in a sense, a partisan board, where some members are appointed as Democrat and some as Republicans?

Mr. McCONNELL. That is correct. I was appointed by the then Democratic Governor Carvel of Delaware as the Democratic appointment, and was elected as chairman to reflect the political complexion of the Board at that time.

Senator EAGLETON. Very good. Did I hear Senator Roth say you were a civilian aide in the Department of Defense?

Mr. McCONNELL. That's correct.

Senator EAGLETON. When was that?

Mr. McCONNELL. It was approximately 1968–1970 when Stan Resor was Secretary of the Army. It was in the Johnson administration, I believe.

Senator EAGLETON. 1970 would not have been in the Johnson administration. That would have been the Nixon administration.

Mr. McCONNELL. I was appointed, sir, in the latter sixties.

Senator EAGLETON. OK. You were appointed by President Johnson?

Mr. McCONNELL. That's my recollection.

Senator EAGLETON. Are there any other posts, positions, missions, committees, et cetera, that you can elaborate for this committee to which you were appointed as a Democrat?

Mr. McCONNELL. Yes, sir. The joint compact between the States of New Jersey and Delaware were charged with the responsibility for the bridges and ferries between the two States. They each had provisions that the Governors of those States could make the appointments with the predominance of each commission reflecting the political climate of the State at the time, and I was appointed as the Democrat—as a Democrat and was elected the first chairman of the joint compact, each side reflecting political ballots.

Senator EAGLETON. When was that, and who appointed you, sir?

Mr. McCONNELL. I was appointed, again, by Governor Carvel. He had a gap in his two terms as Governor, and that's why the time lapse.

Senator EAGLETON. Did you remain a Democrat through the 1970's?

Mr. McCONNELL. Yes, sir. I have. I have remained a Democrat throughout my life.

Senator EAGLETON. Do you remain a Democrat today?

Mr. McCONNELL. I do.

Senator EAGLETON. Good for you.

Senator COHEN. A subject of debate up here. [Laughter.]

Chairman ROTH. I will talk to you later. [Laughter.]

Mr. McCONNELL. However, I have had some friends on both sides that I have supported, and I don't mean to imply that I have never voted for Republicans, because the gentleman who introduced me has always been the subject of my support.

Senator EAGLETON. But you consider yourself a Democrat. Although personalities and issues can be such that from time to time, you may see fit to support a Republican, you, nonetheless, consider yourself a practicing Democrat?

Mr. McCONNELL. I do.

Senator EAGLETON. Come 1988, you will certainly consider yourself a practicing Democrat subject to what the party may offer philosophy-wise and personality-wise?

Mr. McCONNELL. Yes. I think that applies to both parties.

Senator EAGLETON. To both parties. OK.

Everything that we have read and learned about you, Mr. McConnell, is superb and outstanding. I think you are the kind of individual that ought to serve on the Board of Governors of the Post Office Department. You have had experience in business; you have a distinguished career in the law; your credentials are impeccable; your ethical standards and behavior are impeccable, and I think you will be a distinguished and contributing member to that Board. I hope that your nomination can be expedited, because that Board needs to have the vacancies filled and needs to have people of your talent, capacity, and reputation.

Mr. MCCONNELL. I appreciate your remarks very much.

Chairman ROTH. I have no questions, obviously, of Mr. McConnell.

I do want to make one statement for purposes of clarification, so that there is no misunderstanding as we proceed with these nominations. The law, of course, does not provide that there be a certain number of either Republicans, Democrats, Independents, or otherwise, Whigs and whatever-you-have, but the law says that nine of the members to be known as Governors shall be appointed by the President by and with the advice and consent of the Senate, no more than five of whom may be adherents of the same political party.

So I think it is important to understand that it is not necessary for the President to nominate the individuals from the other major party, but could nominate an Independent or member of a minor party. I would just point out that President Carter's last appointment to the Board of Governors was an Independent from Missouri, David Babcock, who replaced a Republican.

I just say that to set the record straight. That is all I have.

Senator EAGLETON. The Senator has correctly stated the law. The custom, in 99 cases out of 100 on boards of this type, and there are numerous boards to which this type of law applies, is that the custom, in practice, is that there be five of one party and four of the other party. Yes, there are exceptions or unusual circumstances where an independent is appointed. Indeed, a Communist could be appointed as a member of the minority party.

Senator COHEN. Not by this President.

Senator EAGLETON. A Socialist could be appointed, a vegetarian. [Laughter.]

But the custom——

Senator ROTH. Would the Senator yield? I also understand that an Independent who was a friend of Tom Eagleton can be appointed.

Senator EAGLETON. Yes, I even know an Independent. [Laughter.]

By the way, it is an interesting point—the qualifications of Mr. Babcock—and that is why I am so pleased that Mr. McConnell is coming to the Board. Mr. Babcock was the chief executive officer of the May Co. department store, one of the biggest companies in this country, and brought to the Board of Governors the kind of expertise in management and the background and integrity that we need on that Board. Mr. Babcock was a winner of many civic awards in St. Louis for outstanding public service. He is the kind of individual we need to manage 712,000 employees.

I think Mr. McConnell, who has served with Hercules, one of the biggest private corporations in this country, will bring the kind of expertise that we need on this Board.

Senator COHEN. I want to join in what Senator Eagleton has said about Mr. McConnell's qualifications. You are being recommended, appointed, and hopefully confirmed very quickly in spite of the fact that you have refused to renounce your allegiance to the Democratic Party. [Laughter.]

Chairman ROTH. Thank you, Mr. McConnell. That is all.

[Biographical information and responses to prehearing questions submitted by Mr. McConnell follow:]

J. H. TYLER MCCONNELL

A. Biographical Information

1. **Name:** J(ames) H(oge) Tyler McConnell

2. **Position to which nominated:** United States Postal Service Board of Governors

3. **Date of Nomination:** Intention to nominate announced October 3, 1985

4. **Address:** Residence

   400 South Ocean Boulevard, Palm Beach FL 33480
   Phone 305-832-8888

   Temporarily (until 10/22/85) at:
   805 Snuff Mill Road, Wilmington, DE 19807
   Phone 302-655-7777

   Office Address:

   Delaware Trust Company
   900 Market Street
   Wilmington, DE 19899
   phone: (direct line) 302-421-7777

5. **Date and place of birth:**

   November 23, 1914 - Richmond, Virginia

6. **Marital Status:**

   Married Margaret Ann Mahler April 25, 1973

7. **Names and ages of children (of previous marriage):**

   Daughter Marion du Pont McConnell
   3510 Kennett Pike, Greenville
   Wilmington, DE 19807
   Age 37

   Daughter Susan McConnell Rinehart
   13 Wood Lane
   Charlottesville, VA 22901
   Age 34

   Son James H. T. McConnell , Jr.
   2631 Jefferson Park Circle
   Charlottesville, VA 22903
   Age 32

   Son William du Pont McConnell
   Born November 6, 1954
   Died March 16, 1976

8. **Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.**

Radford (VA) High School	-	graduated	1928 - 1932
Virginia Military Institute	-	B.A. Degree	1932 - 1936
University of Virginia School of Law	-	L.L.B. Degree (Deans List and VA Law Review)	1936 - 1939
University of Virginia School of Law	-	J.D. Degree	1970

9. **Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.**

See attached list.

10. **Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.**

Commissioner and later chairman of Delaware State Highway Department (1949-1953). Member and First Chairman (1963-1965) of joint compact between Delaware and New Jersey for building and operating all bridge and ferry crossings between the two states, also Chairman Delaware Interstate Highway Division. Civilian aide to Secretary of the Army (1968-1970). Executive Committee (and its Special Committee) of the President's Private Sector Survey on Cost Control/The Grace Commission (1982-1983).

11. **Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.**

Please refer to answer to question 9 above and to attached copy of J. H. Tyler McConnell's listing in Who's Who in America 1984-1985.

12. **Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.**

Please refer to answer to question 9 above and to attached copy of J. H. Tyler McConnell's listing in Who's Who in America 1984-1985.

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

(a) In the past, I have served on state and area committees of the Democratic party in Delaware and Virginia. I was Democratic nominee for Governor of Delaware in 1956. Although I was defeated by J. Caleb Boggs, I received more votes than any other Democrat on the ticket.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

(b) In 1980, I was Delaware Chairman of Democrats for Reagan/Bush. Also, in 1980, I served on the National Steering Committee of Democrats for Reagan/Bush under the Chairmanship of Leon Jaworski. In 1984, I was again on the 16 Member National Steering Committee of Democrats for Reagan/Bush and secured the state Chairman for Delaware.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

(c) Please see attached list of all political contributions to any individual Campaign organization, political party, political action committee, or similar entity of $50.00 or more for the past 10 years.

14. **Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.**

(1) The President of the United States awarded a certificate of appreciation to J. H. Tyler McConnell for service on the Executive Committee of the President's Private Sector Survey on Cost Control in the Federal Government at the White House September 30, 1983.

(2) The American Jewish Committee presented its Institute of Human Relations Award to J. H. Tyler McConnell on October 2, 1982.

(3) The Department of the Army Outstanding Civilian Service Medal for service as Civilian Aide to the Secretary of the Army 1968-1970 was awarded by the Secretary of the Army January 6, 1971.

(4) The Delaware State Highway Department in 1953 named a Bridge on Route 141 over the Brandywine River near Wilmington "The J. H. Tyler McConnell Bridge" in recognition of outstanding service as Commissioner and Chairman of the Delaware State Highway Department 1949-1953. It is reported as being the only bridge in Delaware named for a living person.

(5) The Flame of Life Award of the National Safety Council was awarded to Chairman J. H. Tyler McConnell for

particularly outstanding service 1965-1971. The first Flame of Life awarded to an individual.

15. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None applicable.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

(a) No

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

(b) I have enjoyed a career of nearly 50 years in the legal, judicial, business, financial, civic and political life of our country. This experience, together with service on many boards and commissions, a number of which I was privileged to chair, should have developed in me a number of attributes which should affirmatively qualify me for the Board of Governors of the United States Postal Service in the further implementation of the provisions of the Postal Reorganization Act.

B. Future Employment Relationships

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

On December 31, 1984, I retired completely from my employment with Delaware Trust Company after some 19 years as its Chief Executive Officer. Prior to that, I had retired on January 31, 1966 as an officer, director, and committee member of Hercules Incorporated. I receive pensions from both Companies and continue as a Director of Delaware Trust Company for which I receive the bank's customary directors fees. I receive no other director's fees or salary and have no other employment.

2. Do you have plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. **Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?**

No.

4. **Has anybody made a commitment to employ your services in any capacity after you leave government service?**

No.

5. **If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?**

Yes.

C. Potential Conflicts of Interest

1. **Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.**

Although I have no deferred compensation arrangements or other continuing dealings with business associates, clients or customers, since my retirement from Delaware Trust Co. on 12/31/84 as Chairman and CEO, I receive monthly retirement income of $18,428.29 representing a monthly income of $3,247.30 from the Delaware Trust Retirement Plan, and $15,180.99 under the terms of my supplemental Pension Agreement, the aggregate of which is annualized at $221,139.48. In addition, I have a Hercules Incorporated pension of $728.64 monthly. The continuation of these is deemed essential to me and I would not desire Government service which would interfere with them.

2. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.**

None to my knowledge.

3. **Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**

None to my knowledge.

4. **Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly**

influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

As a former chairman and Chief Executive Officer of Delaware Trust Co., a former President of the Delaware Bankers Association, a former Vice President of The American Bankers Association and member of its governing Council, a former Chairman of the Delaware State Highway Dept., a former chairman of the Delaware River and Bay Authority etc., I have appeared before legislative hearings and taken action always as a representative of the interests of the organizations I headed at that time.

5. **Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)**

I would consult with the designated ethics officer and take whatever action by way of abstention from voting on an issue which might involve possible conflict or other mutually satisfactory action. I was not a party to the creation of the trust with Northern Trust Bank of Florida, 700 Brickell Avenue, Miami, FL 33131 in which I have a life estate only.

6. **Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position?**

Yes.

D. Legal Matters

1. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.**

No.

2. **Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.**

Not to my knowledge.

3. **Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.**

Not in my individual capacity have I been involved in any administrative proceeding or civil litigation. The businesses in which I was an officer, director or which I headed, however, were involved in litigation to be expected in the conduct of their businesses, none of such proceedings are deemed relevant to this inquiry.

4. **Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?**

No.

5. **Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.**

Nothing to my knowledge.

9. Employment Record:

06/85	Present	WHYY-TV	Wilm.-Phila.	Director Emeritus	
03/85	Present	400 S. Ocean Blvd. Association	Palm Beach, FL	Board of Governors	
06/64	06/85	WHYY-TV	Wilm.-Phila.	Director	
03/47	Present	Delaware Trust Co.	Wilmington, DE	Director	
02/66	01/85	Delaware Trust Co.	Wilmington, DE	President (1966-1979)	
		" " " " " "	" " " " "	Chairman (1979-1985)	
		" " " " " "	" " " " "	CEO (1966-1985)	Retired
01/59	02/66	Hercules Powder Co.	Wilmington, DE	Member of Bd. of Dir. and Fin. Committee	" " "
08/55	02/66	Hercules Powder Co.	Wilmington, DE	Corp. Sec.	" " "
02/54	02/66	Hercules Powder Co.	Wilmington, DE	Asst. to Pres.	To be CEO of DTC
02/51	02/54	Hercules Powder Co. Executive Dept.	Wilmington, DE	Adm. Asst. to Exec. Comm.	" " "
04/46	02/51	Hercules Powder Co. Legal Dept.	Wilmington, DE	Asst. Gen. Counsel	" " "
04/44	04/46	Hercules Powder Co. Explosives Dept.	Wilmington, DE	Asst. to Gen. Mgr.	" " "
01/43	03/44	Hercules Powder Co. Legal Dept.	Wilmington, DE	Asst. Gen. Counsel	" " "
11/42	12/42	Missouri Ordnance Works (Hercules Powder Co.)	Louisiana, MO	Plant Mgr.(acting)	" " "
06/42	10/42	Hercules Powder Co.	Wilmington, DE	Counsel	Promotion
		Missouri Ordnance Works	Louisiana, MO	" " "	" " "
		New River Ordnance Works	Dublin, VA	Counsel	" " "
		VA Ordnance Works	Glen Wilton, VA		" " "
08/41	06/42	Hercules Powder Co. (Hercules Inc.) Legal and Explosives Depts.	Wilmington, DE & Louisiana, MO	Counsel	Promotion
01/43	03/47	First and Merchants National Bank	Radford, VA	Director	Business Commitments Elsewhere
03/37	08/41	Peoples Bank	Radford, VA	Director	Sale of Bank Stock
09/40	08/41	Municipal Civil and Police Court	Radford, VA	Judge	" " "
07/38	08/41	Tyler, McConnell & Goldsmith Attorneys at Law	Radford, VA	Member of Firm	To accept Hercules Employment
06/39	07/39	Inst. of Pub. Affairs	Charlottesville, VA	Asst. to Leader	Conclusion of Inst.

*For further information, please see attached copy of J.H.T. McConnell's listing in Who's Who in America 1984-1985.

MCCONNELL, JAMES HOGE TYLER businessman, lawyer, banker; b. Richmond, Va., Nov. 23, 1918; s. Frank Percy and Belle Norwood (Tyler) McC.; m. Jean Ellen duPont, Sept. 23, 1944 (div. 1972); children: Marion Susan, James, William (dec.); m. Margaret Mahler, Apr. 25, 1973. B.A., Va. Mil. Inst., 1936; LL.B., U. Va., 1939, J.D., 1970. Bar: Va. 1938, Mo. 1942, Del. 1944. Vice pres., dir. Peoples Bank, Radford, Va., 1939-40; ptnr. Tyler, McConnell & Goldsmith, Radford, 1938-41; judge Civil Ct., Radford, 1940-41; asst. leader Inst. Pub. Affairs U. Va., Charlottesville, 1939; counsel, Hercules, Inc., Wilmington, Del.; plant mgr., asst. gen. counsel, asst. to pres., corp. sec. Hercules Inc., Wilmington, Del., 1944-66; dir. fin. com. Hercules, Inc., Wilmington, Del., 1959-66, pres., 1966-79, chmn., 1979—; chief exec. officer, chmn. exec. com., dir. Del. Trust Co., Wilmington, 1966—; dir., exec. com. Sta. WHYY-TV, 1964—; dir. Del. Dept. Health and Social Services, 1967-69, Del. Indsl. Fin., 1973-75; pres. Wilmington Clearing House, 1968-69, 79-80. Parent chmn. Bennett Coll., N.Y., 1965-66; bd. overseers, chmn. fin. com. Sweet Briar Coll., 1959-71; trustee Va. Mil. Inst., 1953—; commr., chmn. Del. State Hwy. Dept., 1949-53; 1st chmn. Del. River Bay Authority, 1963-65; founder, mem. exec. com., dir. Greater Wilmington Devel. Council, 1960—, pres., 1960-63; mem. Del. Roundtable Inc., 1980—, mem. exec. com., 1983—; mem. Del. Com. Organized Crime, 1966-67; chmn. Fair Hill Races, 1966-75; pres. Cecil County Breeders Fair, Inc., 1966-75; mem. nat. adv. com. Camp Fire Girls, 1971-72; bd. dirs. Del. chpt. ARC, 1948—; campaign chmn. Nat. Safety Council, 1952, exec. com., chmn., 1969-71, trustee, 1972—; mem. Del. Safety Council, 1950—, pres., 1960-63; mem. Block Blight, Inc., 1968-69; bd. dirs. Urban Coalition, 1977-79; mem. Del. Dept. Indsl. Fin., 1973-75; trustee Lawrenceville Sch., N.J., 1963-71; bd. dirs. Grand Opera House, Inc., 1981—; founder, bd. dirs., mem. exec. com. Del. Mus. Natural History, 1958-81; Dem. nominee Gov. Del., 1956; chmn. Del. Dems. for Reagan-Bush, 1980; mem. exec. com. Pres.'s Private Sector Survey, 1982—; bd. dirs. New Castle County Econ. Devel. Corp., 1981—. Served as 1st lt. USAR, 1939-42; civilian aide to Sec. Army, 1968-70. Bridge across Brandywine River named for him; recipient NBC Flame of Life award, Outstanding Civilian Service Medal Dept. Army, 1971, award Inst. Human Relations, 1982. Mem. ABA, Va. Bar Assn., Del. Bar Assn., Mo. Bar Assn., Am. Judicature Soc., Del. Bankers Assn. (exec. com. 1966-73, pres. 1972-73), Nat. Steeplechase, Hunt Assn. (steward 1964-76, v.p. 1971-76), Del. Racing Assn. (dir. 1948-82, v.p.), Am. Bankers Assn. (governing council 1974-76, chief exec. officer com. 1979-81), Raven Soc., Phi Alpha Delta, Kappa Alpha. Episcopalian. Clubs: Wilmington, Wilmington Country; River (N.Y.); Farmington Country (Va.); Rehoboth Beach Country, Indian River Yacht; Bath and Tennis, Everglades (Palm Beach). Home: Sherwood Forest 805 Snuff Mill Rd Wilmington DE 19807 also Home: 400 S. Ocean Blvd Palm Beach FL 19807 Office: Delaware Trust Co 900 Market St Wilmington DE 19899

PART A - BIOGRAPHICAL INFORMATION

Item 13 (c) Political Contributions 02-14-77 to 08-31-85

02/14/77	2191	Delbank PAC-DBA	$ 25.00
03/07/77	2241	The McLaughlin for Mayor Committee	$ 25.00
05/10/77	2418	Democratic State Committee 1977 Jefferson - Jackson Day Dinner	$ 35.00
10/13/77	2789	17th Senatorial District Campaign Committee honoring Senator Zimmerman	$ 25.00
12/20/77	2950	Dollars for Democrats	$ 15.00
02/14/78	3293	Joseph R. Biden, Jr. Primary Election Fund	$1,000.00
03/20/78	3370	Wier for Re-Election Committee	$ 250.00
10/09/78	3828	Delbank PAC-DBA	$ 125.00
11/06/78	3856	Delbank PAC-DBA	$ 100.00
01/16/79	4076	Evans 1978 Committee	$ 200.00
05/11/79	4318	Delbank PAC-DBA	$ 200.00
05/11/79	4319	BANKPAC (Federal)	$ 200.00
09/13/79	4589	Campaign Committee for Orlando J. George	$ 50.00
01/18/80	4928	The McLaughlin Committee 01-25-80 Party for Mayor at Grand Opera	$ 100.00
02/26/80	4994	Friends of Mike Castle Campaign for Lt. Governor	$ 100.00
07/23/80	5340	Collins 1980 Committee	$ 250.00
08/09/80	5369	Friends of Mike Castle	$ 40.00
09/30/80	5458	Committee to Elect Tom Carper	$ 250.00
10/16/80	5473	Democratic State Committee	$ 100.00

10/09/80	5491	Leo I. Marshall	$ 100.00
10/28/80	5532	City Democratic Committee	$ 200.00
10/28/80	5534	Committee to Re-Elect Mayor McLaughlin	$ 250.00
10/28/80	5535	Sears for City Council Committee	$ 250.00
10/29/80	5536	Evans 1980 Committee	$ 250.00
11/10/80	5560	Delbank PAC-DBA	$ 200.00
11/20/80	5577	Reagan-Bush Compliance Fund	$1,000.00
11/18/80	5584	Republican State Committee Celebration Bash at Ice House	$ 25.00
12/15/80	5667	Collins 1980 Committee	$ 50.00
04/02/81	5908	Senate-House Dinner	$ 200.00
04/23/81	5937	1981 Biden Seminars	$ 100.00
04/23/81	5942	Republican State Committee	$ 75.00
05/12/81	5998	Democratic State Committee Jefferson-Jackson Day Dinner	$ 35.00
07/21/81	6143	Republican State Committee Party at Roth's Summer Home	$ 35.00
09/29/81	6253	Republican Nat'l Finance Committee Ambassador's Club Dues	$1,000.00
09/29/81	6254	Republican Presidential Task Force Charter Membership	$ 120.00
10/15/81	6292	Evans 1982 Re-Election Campaign	$ 200.00
10/22/81	6307	Campaign Committee for Orlando J. George, Jr.	$ 50.00
03/22/82	6613	Collins 1980 Committee	$ 200.00
03/23/82	6614	Republican Nat'l Committee Reg. Fee for Major Donor Club meeting at Capital Hill Club 04/15 and 04/16	$ 25.00

03/30/82	6627	Roth Senate Committee	$ 750.00
04/15/82	6650	Republican Senatorial Inner Circle Membership Enrollment	$ 200.00
04/21/82	6670	1982 Senate - House Dinner	$ 250.00
05/13/82	6715	Delbank-PAC-DBA	$ 200.00
05/26/82	6746	Evans 1982 Committee	$ 500.00
07/29/82	6848	Republican State Committee Cocktail Party at Carpenters Rehoboth	$ 75.00
09/09/82	6934	Evans 1982 Committee	$ 500.00
09/24/82	6957	Republican Presidential Task Force	$ 100.00
10/29/82	7032	Citizens for Farley	$ 100.00
12/14/82	7117	Republican Nat'l Committee Renewal of Ambassador's Club Membership	$1,000.00
05/03/83	7406	A Tribute to Pete du Pont	$1,000.00
06/02/83	7470	Democrats' 1984 Legislative Breakfast held 06/09 at Waterworks	$ 100.00
06/15/83	7494	Delbank-PAC-DBA	$ 200.00
06/21/83	7503	Republican Presidential Task Force Membership Renewal	$ 120.00
06/22/83	7506	Citizens for Bill Quillen	$ 500.00
07/28/83	7578	Committee to Elect Tom Carper	$ 100.00
11/08/83	7769	Democratic City Committee	$ 100.00
01/03/84	7889	Delaware Victory - 1984 Re: Pete du Pont	$ 60.00
01/06/84	7913	Elise du Pont Election Committee	$ 200.00
05/15/84	8162	Democrat's 1984 Legislative Breakfast	$ 100.00
06/13/84	8225	Citizens for Bill Quillen	$ 100.00
07/17/84	8275	Delbank-PAC-DBA	$ 200.00
10/12/84	8416	James S. Brady - Presidential Foundation 10/28 Cocktail Party at G.C.C. in Brady's honor	$ 300.00
10/15/84	8421	Friends of Battle Robinson	$ 75.00
07/17/85	8887	Carper for Congress Rostenkowski breakfast	$ 100.00

PRE-HEARING QUESTIONS FOR
J. H. TYLER MCCONNELL

I. Nomination Process and Potential Conflicts

Question 1

Were any conditions, expressed or implied, attached to your nomination to be a Governor of the United States Postal Service?

No

Question 2

What commitments have you made with respect to the policies and programs you will attempt to implement as a Member of the Board of Governors?

None

Question 3

Are there any issues involving the Postal Service from which you may have to disqualify yourself? If so, please explain.

Not to my knowledge. I would however work closely with the designated ethics officer and legal counsel for the agency.

Question 4

Did you actively seek this nomination? Explain.

No

Question 5

Why do you feel you are qualified to be a member of the Board of Governors and what contribution do you feel you can make to the Postal Service as a member of the Board?

From many years of service on a wide variety of boards and commissions, many of which I was privileged to chair, I feel that I can make a worthwhile contribution to the deliberation of the Board of Governors of the Postal Service in directing the exercise of the power of the Postal Service in accordance with the Postal Reorganization Act.

II. Responsibilities of the Board of Governors

Question 1

What is your view of the role of the Board of Governors of the Postal Service? What do you believe are its most important functions and responsibilities?

My view of the role of the Board of Governors of the Postal Service is that in many respects it should be analogous to the role of the Board of a very large but very well run corporation in the private sector.

Question 2

How do you view the relationship of the Board of Governors to the Postal Service and, specifically, to the Postmaster General?

I view the relationship of the Board of Governors to the Postal Service and specifically to the Postmaster General as being strikingly similar to the private sector counterpart of a board of directors, the corporation as an entity, its employees, and the Chief Executive Officer.

Question 3

How do you view the relationship and responsibilities of the Board of Governors to the President, the public and the Congress?

Superimposed on the foregoing, however, is the duty and privilege of serving the public to the best of our abilities. In so doing, I would be fully cognizant of the role of the President and the Congress in the process, and would always be a willing listener to opposing points of view. My years of experience have made me a good listener!

III. Postal Reorganization

Question 1

Various proposals have been made to increase the accountability of the Postal Service to the Congress including Presidential appointment of the Postmaster General or the Chairman of the Board of Governors. How do you feel about these proposals?

Although as a member of Executive Committee of the President's Private Sector Survey on Cost Control and its special committee, as well as serving as a Task Force Co-Chairman, I have become more knowledgeable of the Postal Service than I would have been otherwise, I would like to acquaint myself with more facts on both sides of this question before rendering a judgment on such proposals as these.

Question 2

The Postal Rate Commission is a unique regulatory agency in that it does not have final decision making responsibility with respect to most matters brought before it. As you know, this responsibility rests with the Board of Governors of the Postal Service. Do you believe that this arrangement should be maintained? If so, why?

I would prefer to appraise the way this arrangement is working before making a decision on this matter.

Question 3

Would you recommend any changes in the role and responsibilities of either the Postal Rate Commission or the Board of Governors?

I would not recommend any changes in the role and responsibilities of either the Postal Rate Commission or the Board of Governors until I have had an opportunity to study this question more fully.

IV. Postal Service Operations

Question 1

To what extent do you view the Postal Service as a public service appropriately financed out of the United States Treasury?

I view the service performed by the Postal Service as being a vital element in the lives of literally all of our citizens. However, I would like to investigate fully all means of implementing such services in an efficient and economical fashion so as to minimize or even obviate the need for financing out of the United States Treasury.

V. Relations with Congress

Question 1

What suggestions do you have for strengthening the relationship of the Board of Governors to the Congress. Do you believe that this is necessary?

In my judgment, the maintenance and improvement of Communication between Congress and the Board of Governors is perhaps the most important single factor in strengthening the relationship between the two. I believe this is essential if each is to best serve the public. I can assure you of my desire to cooperate fully to this end.

Question 2

Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted Committee of the Congress?

I am honored to appear before you today, and I agree without reservation to appear and testify before my duly constituted Committee of the Congress. I hope that this is not my last committee appearance and I thank you very much.

Chairman ROTH. At this time, I would like to call forward Mr. Setrakian.

TESTIMONY OF ROBERT SETRAKIAN, A NOMINEE TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE U.S. POSTAL SERVICE

Chairman ROTH. Mr. Setrakian, we welcome you here. Do you have any members of your family here?

Mr. SETRAKIAN. Regrettably, I don't, Senator.

Chairman ROTH. We are very pleased that you could be here and appreciate your cooperation in preparing for these hearings.

Do you have a prepared statement?

Mr. SETRAKIAN. I do, Senator, but I was simply going to submit it for the record. But do you care for me to read it?

Chairman ROTH. If you want to summarize it, that would be fine, and we will include it in the record.

Mr. SETRAKIAN. It is primarily some of my background here in Washington during the past 2½ years with the Federal Maritime Commission, and other background that I hope would serve me well as a Governor of the Postal Service.

Chairman ROTH. We appreciate the material, and as I said, your full statement will be included.

I have a series of questions for the record.

Is there anything you are aware of in your background which might present a conflict of interest of the duties of the office to which you have been nominated?

Mr. SETRAKIAN. No, Senator.

Chairman ROTH. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. SETRAKIAN. No, I do not.

Chairman ROTH. If you are confirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Mr. SETRAKIAN. Yes.

Chairman ROTH. Senator Eagleton, do you have any questions?

Senator EAGLETON. Mr. Setrakian, for the record, would you give us a brief summary of your managerial experience?

Mr. SETRAKIAN. During the past 30 years, I have been involved at an executive level, either as a executive officer or a director of various companies and various industries, including shipping, transportation shipping, airline industry, some banking and a family agricultural endeavor. I have been and now serve as a board member of a financial company with assets of approximately $12 billion. This particular corporation has now between 2,000 and 5,000 employees.

Senator EAGLETON. Is that the one you are currently associated with?

Mr. SETRAKIAN. Yes, sir.

Senator EAGLETON. What is your title there?

Mr. SETRAKIAN. I'm a director.

Senator EAGLETON. I see.

Mr. SETRAKIAN. I have been a founder and chairman of the board of a small national bank in California. I was a director of a regional airline in California, Pacific Airlines, and was with that firm during the time we merged with two other airlines to conceive Air West. That was eventually sold to the Howard Hughes organization, which became Hughes Air West, which is now part of Republic Air Line.

I have had past experience in the maritime industry as, at one time, the president of a steamship company in the United States; the last of the coastwise carriers on the West Coast, serving, at that time, Hawaii and Senator Stevens' State of Alaska.

Senator EAGLETON. That is a remarkable list of managerial and directorial experience which will be of an honest value when you are confirmed to this post.

As I did with Mr. McConnell and subject to Senator Roth's observation that the law says no more than five of one party, but also subject to the Eagleton observation that pragmatic custom in 99 cases out of 100 has been five of one of the major parties and four of another, I would like to establish for the record your Democratic credentials.

Did you not at one time hold a post in the Democratic Party in California?

Mr. SETRAKIAN. I did, sir.

Senator EAGLETON. What was that?

Mr. SETRAKIAN. I was Treasurer of the Democratic State Central Committee.

Senator EAGLETON. When was that?

Mr. SETRAKIAN. It was in the early 1960's, Senator Eagleton. I can't give you the precise day.

One thing I failed to put in the information that I made available to you was that I was also a Delegate to the Democratic Convention in 1968 in Chicago, which was one of the—

Senator EAGLETON. That was an exciting time.

Mr. SETRAKIAN [continuing]. It was one of the political highlights of my career.

Senator EAGLETON. Could you just give for the record other events or activities in which you participated as a Democrat? If the list is very long, could we have a capsulized version?

Mr. SETRAKIAN. Yes. I come from a long family line of Democrats. My first major involvement was during the Edmond "Pat" Brown administration in California. Governor Brown appointed me to the super body of education in California, the Coordinating Council for Higher Education. I served on that board for 2 years. I was also appointed by Governor Brown to the California State Agricultural Committee and State Fair. Subsequently, I, after being the Treasurer to the State Central Committee, I was asked if I would be interested in running for the office of chairman, however, at that point of my career, I found it necessary to go into the private sector and try and develop enough funds to keep house and home.

Senator EAGLETON. Do you still consider yourself to be a Democrat?

Mr. SETRAKIAN. I am, sir.

Senator EAGLETON. Have you ever supported, for example, Senator Cranston in his political career?

Mr. SETRAKIAN. I not only supported Senator Cranston, but I was a very close friend of Alan's prior to his being Senator and throughout his first campaign for Senator. I am also a strong supporter of Tony Coelho, and a personal friend.

Senator EAGLETON. And the same final question that I think I asked of Mr. McConnell to this effect, that subject to the personalities involved and subject to the platforms and philosophies as pronounced in the 1988 election, you will consider yourself presumptively a Democrat, reserving the right, though, of course, to support someone else if your conscience so dictates?

Mr. SETRAKIAN. That is correct.

Senator EAGLETON. That is all I have, Mr. Chairman.

Chairman ROTH. I guess I have no further questions. I was tempted to ask you who you voted for in 1968, but I will resist that temptation. [Laughter.]

Thank you very much. We appreciate, again, your cooperation. We hope to move expeditiously on your nomination, as well as the others.

Mr. SETRAKIAN. Thank you very much, Senator Roth.

Chairman ROTH. Thank you.

[A prepared statement, biographical information, and responses to prehearing questions submitted by Mr. Setrakian follow:]

PREPARED STATEMENT OF ROBERT SETRAKIAN

Good morning Mr. Chairman. I am very pleased and proud to be here this morning and would like to offer a very brief personal statement relevant to this appointment.

First, let me say that I consider it a rare privilege to again be nominated by the President to a federal board, particularly of the magnitude of purpose of the Board of Governors of the U.S. Postal Service.

As you recall, Mr. Chairman, I was confirmed by the Senate to serve as a Commissioner of the Federal Maritime Commission in May, 1983. Fortunately for me, during that period the Commission was taking an active role in assisting in the rewriting of the Shipping Act of 1916 into a more viable and updated code for the revitalization of the maritime industry. The resultant Shipping Act of 1984 was signed into law on March 20, 1984.

During that same period of time, I was designated inquiry officer of a one-year national port study that culminated in a formal set of recommendations that were unanimously adopted by the Commission.

Prior to my association with the Maritime Commission, I can look back on thirty years of experience in ocean and air transportation, banking, agriculture and other industries at a management level as well as a brief period of time among the ranks of organized labor as an apprentice in a west coast shipyard during World War II. I am confident that this past broad area of involvement would serve me well as a member of the Board of Governors of the U.S. Postal Service by representing the public interest generally in reviewing the practices and policies of the Postal Service and the direction and control of its expenditures.

The birth of the Post Office Department, the predecessor of the U.S. Postal Service, dates back to 1775 under the guidance of our first Postmaster General, Benjamin Franklin. The phenomenal history and accomplishments of this significant and colorful agency is only possibly eclipsed by the extraordinary dimensions of its current operations. In "corporate" ranking it would be considered the third largest employer, the second largest retailer and the largest transportation company in the Nation. I believe that the experience I bring to the Board would be a useful addition to this major agency.

Should the Senate concur with the President's confidence in me, I shall try to insure that the actions of the Board will continue to lead toward a sound future for

the U.S. Postal Service in association with the collegial body of Governors, the Postmaster General, his staff, associated agencies, Congress and the public at large.

This concludes my statement, Mr. Chairman, and I will be happy to answer any questions that you may have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

   Robert Setrakian

2. Position to which nominated:

   Member of the Board of Governors of the U.S. Postal Service

3. Date of nomination:

4. Address: (List current place of residence and office addresses.)

   Residence: 1905 Baker St., San Francisco, CA 94115
   Office: 601 California St., Suite 610, San Francisco, CA 94108

5. Date and place of birth:

   January 21, 1924
   Fresno, California

6. Marital status: (Include maiden name of wife or husband's name.)

   Divorced

7. Names and ages of children:

Scott Howard Setrakian	30
Robert Ainsworth Setrakian	29
Mary Arline Setrakian	26
Mark Sox Setrakian	20

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

Name of School	Address	(year) From	(year) To	Degrees
Lowell High School	San Francisco	1938-1942		High School
Stanford University	Stanford, CA	1946-1949		BA - 1949

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

Title	Employer	Address	Dates: From-To
Commissioner	Federal Maritime Commission	Washington, D.C. 20573	May 1983-August 1985
President	Midstate Horticultural Co., Inc.	San Francisco, CA 94111	1949-January 1983
President	California Growers Winery	San Francisco, CA 94111	Mar 1966-Sept 1982
President	Coastwise Line	San Francisco, CA 94111	1957-1963

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State or local governments, other than those listed above.

President, California State Fair & Exposition
Member, California Coordinating Council for Higher Education
Member, California State Wine Advisory Board
Director, California State Brandy Advisory Board

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Director, First Nationwide Financial Corporation
Director, First Nationwide Savings and Loan
Director, River Hills Agricorp.
Director, National Bank of Agriculture
Director, Pacific Airlines
Director, Air West
Director, William Saroyan Foundation

12. Memberships: List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

President, Stanford Club of Marin
Member, World Trade Club
Director, Boy Scouts of America
Director, Stanford Alumni Association
Director, Wine Institute
Member, American Society of Enologists

Director, California Grape and Treefruit League
Director/Member, Bohemian Club
Member, Olympic Club
Member, St. Francis Yacht Club

13. Political affiliations and activities:
(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Treasurer, Democratic State Central Committee, California

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

Reagan for President	$300
Wine Institute P.A.C.	500
Congressman Cohelo, Fresno	200

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

None

15. Published writings: List the titles, publishers, and ates of books, articles, reports, or other published materials which you have written.

None

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None

17. Selection:
(a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen, in part, by my association in California State Government with Governor Reagan as President of Cal Expo, with President Reagan in Washington as his nominee as Commissioner of the Federal Maritime Commission and my belief and support of many of his principles and programs.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe that my business background of 30 years in management, as well as having served as a Director of companies in diverse industries, will assist me in bringing to the Board of Governors a pragmatic and meaningful approach towards the resolution of the many issues of the Postal Service.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

No.

2. Do have have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Yes. I have no commitments or agreements, but I do plan to continue my relationship with those entities that I am currently involved as well as possible future associations, so long as there is no conflict of any nature during my proposed service with the Government.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I receive a Directors fee from two corporations and nominal compensation as President of the Saroyan Foundation.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

None

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Not Applicable

6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so,

provide details.

No

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

PRE-HEARING QUESTIONS FOR ROBERT SETRAKIAN

I. Nomination Process and Potential Conflicts

Question 1

Were any conditions, expressed or implied, attached to your nomination to be a Governor of the United States Postal Service?

No

Question 2

What commitments have you made with respect to the policies and programs you will attempt to implement as a Member of the Board of Governors?

None

Question 3

Are there any issues involving the Postal Service from which you may have to disqualify yourself? If so, please explain.

None

Question 4

Did you actively seek this nomination? Explain.

No

Question 5

Why do you feel you are qualified to be a member of the Board of Governors and what contribution do you feel you can make to the Postal Service as a member of the Board?

I feel my qualifications as a member of the Board of Governors are derived from my corporate background of 30 years as an Officer and Director in several diverse industries including Transportation, Banking and Agriculture. This will assist me in bringing to the Postal Service a practical and meaningful approach to the various issues of the Board requiring resolution.

II. Responsibilities of the Board of Governors

Question 1

What is your view of the role of the Board of Governors of the Postal Service? What do you believe are its most important functions and responsibilities?

My view of the role of the Board of Governors of the Postal Service is comparable to that of a Corporate Board of Directors of a major publicly held company. Its functions and responsibilities include the selection of a highly qualified, proven Chief Executive Officer in the position of Postmaster General; lend direction to the management, review all practices and policies of the Postal Service and carry out the provisions of the Postal Service Act as mandated by Congress for the public benefit.

Question 2

How do you view the relationship of the Board of Governors to the Postal Service and, specifically, to the Postmaster General?

The Board of Governors sets the policy of the Postal Service and reviews both income and expense. The Postmaster General has the responsibility of executing those policies.

Question 3

How do you view the relationship and responsibilities of the Board of Governors to the President, the public and the Congress?

I view the Board of Governors as being responsible to the public through its elected officials which includes the President and Congress.

III. Postal Reorganization

Question 1

Various proposals have been made to increase the accountability of the Postal Service to the Congress including Presidential appointment of the Postmaster General or the Chairman of the Board of Governors. How do you feel about these proposals?

I have not had access to the various proposals of accountability and therefore have no opinion on this question.

Question 2

The Postal Rate Commission is a unique regulatory agency in that it does not have final decision-making responsibility with respect to most matters brought before it. As you know, this responsibility rests with the Board of Governors of the Postal Service. Do you believe that this arrangement should be maintained? If so, why?

I believe that this concept should be retained. Again, as is the case with a publicly held corporation, there often exists unique specialized committees whose responsibilities include detailed

evaluations and recommendations to the Board. Final authority must rest with the Board. To do otherwise would separate responsibility from authority.

Question 3

Would you recommend any changes in the role and responsibilities of either the Postal Rate Commission or the Board of Governors?

No

IV. Postal Service Operations

Question 1

To what extent do you view the Postal Service as a public service appropriately financed out of the United States Treasury?

It is my assumption and belief that the Postal Service Act was conceived, in part, to take on a corporate management style and direction that would eliminute subsidies and create a sound business environment in it's operation with income no less than the most efficient cost of operation.

V. Relations With Congress

Question 1

What suggestions do you have for strengthening the relationship of the Board of Governors to the Congress. Do you believe that this is necessary?

It is my observation that a strong continuing positive relationship with Congress with any regulatory agency is paramount and must assume that the same is true with the Board of Governors. I am not yet prepared to offer suggestions as to how to strengthen this association.

Question 2

Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted Committee of the Congress?

I agree without reservation.

Chairman ROTH. The committee will now consider the nomination of Barry D. Schreiber. Would you please come forward?

TESTIMONY OF BARRY D. SCHREIBER, A NOMINEE TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE U. S. POSTAL SERVICE

Chairman ROTH. We appreciate Senator Hawkins' being here to introduce Mr. Schreiber. She alluded to the fact that his wife and I believe three children are here. I wonder if they wouldn't please rise.

Thank you very much for being here. I know you are a very proud family, and your husband and father appreciates your strong support.

Mr. Schreiber, I have a series of questions I want to ask you. First, is there anything you are aware of in your background which might present a conflict of interest for the duties of the office to which you have been nominated?

Mr. SCHREIBER. No, sir.

Chairman ROTH. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. SCHREIBER. No, sir, I do not.

Chairman ROTH. If you are confirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Mr. SCHREIBER. Yes, sir, I do.

Chairman ROTH. Mr. Schreiber, I would like to ask you some questions about any conflict of interest that might be presented because of the Dade County Commission retention of the law firm of Broad & Cassel as one of its five bond counsels.

What position do you hold in Dade County government?

Mr. SCHREIBER. I serve as a member of the Board of County Commissioners of Dade County, which is a nine-member board, one of whom is the mayor. The rest of us are called commissioners. It is a nonpartisan board.

Chairman ROTH. What is your relationship with the law firm of Broad & Cassel?

Mr. SCHREIBER. I am of counsel to the law firm of Broad & Cassel.

Chairman ROTH. What role, if any, did you play in the decision of the commission to retain Broad & Cassel?

Mr. SCHREIBER. To retain Broad & Cassel as?

Chairman ROTH. As bond counsel.

Mr. SCHREIBER. I played absolutely no role whatsoever.

Chairman ROTH. No role at any level?

Mr. SCHREIBER. No, sir, including basically, a nonrole, because I was not involved in the process or in the ultimate vote.

Chairman ROTH. Did you participate in discussions by the commission on this subject?

Mr. SCHREIBER. To the best of my knowledge, I did not.

Chairman ROTH. Did you participate in any votes on this matter?

Mr. SCHREIBER. To the best of my knowledge, I did not.

Chairman ROTH. Did you talk to any other commissioners about this decision or try to influence any votes?

Mr. SCHREIBER. No, sir, I did not.

Chairman ROTH. How do you intend to deal with bond issue decisions made by the commission in the future?

Mr. SCHREIBER. The posture that I am presently in is based upon a county attorney, our county attorney's opinion in written form, which indicated that I had a right—or have a right to be involved in matters relating to the firm of Broad & Cassel, provided I have no financial interest whatsoever.

That being the position, by virtue of the legal authority given to me by my attorney, if you will, by virtue of me being a commissioner and he being the county attorney, in the future, based on the county attorney's position, I would be in a position to vote on matters pertaining to bonds for the county.

We do not get involved in any way, the commission, in the selection of a particular bond counsel, particular law firm, to handle a particular issue. No one gets involved in that process at all. So let us assume for the moment that we are talking about whether or not we should issue bonds, period, and at that point, the players are not in place. I feel very comfortable, based on the county attorney's opinion, that certainly, I can deliberate and indeed, vote yes or no whether the county should issue bonds.

Once the commission determines that bonds ought to be issued, it is the county attorney, to the best of my knowledge, and no one else, who decides which of the bond counsels will be picked to handle that particular issue. We are not involved.

Assuming thereafter there are votes to be taken by the commission relative to that bond issue with the bond counsel firm in place, unless the county attorney changed his opinion, I would still be under the point of view that I could vote on those matters, since I do not have any financial interest in that particular relationship between the county and Broad & Cassel as being bond counsel on that particular issue.

Indeed, my record will clearly indicate that I have often voted against the issuance of bonds and will continue do so if I feel that is in the best interests of the constituents that I serve in Dade County.

Chairman ROTH. You referred to the opinion of the county attorney. Did I understand that was in writing?

Mr. SCHREIBER. Yes, sir, I believe that the committee has a copy of a letter, a memorandum that the county attorney has written. I'm sorry I do not have such a copy with me.

Senator EAGLETON. I have a copy.

Chairman ROTH. I would just ask that it be included in the record as part of the record. So ordered.

Senator EAGLETON. Just so we can identify it, Mr. Chairman, because I guess we will refer to it more than once, it is a memorandum, it says, from Robert A. Ginsburg, Dade County attorney, to Hon. Barry Schreiber; subject, conflict of interest, and it is dated January 9, 1985.

Chairman ROTH. It will be included as part of the record absent any objections.

[The memorandum referred to follows:]

MEMORANDUM

103.01-14

TO Honorable Barry D. Schreiber
Dade County Commissioner

DATE January 9, 1985

SUBJECT Conflict of Interest

FROM Robert A. Ginsburg
Dade County Attorney

You have inquired as to whether there is any violation of Dade County's Conflict of Interest and Code of Ethics Ordinance (Sec. 2-11.1, Code of Metropolitan Dade County) if the local law firm to which you are "of counsel" acts as the county's bond counsel or as underwriter's counsel on a county financial transaction. You have indicated that your "of counsel" arrangement with the law firm means that you are not considered a partner or associate of the firm; that you do not share in the profits or losses of the firm; that you have an office and a secretary at the firm; that your name appears on the firm's letterhead with the notation "of counsel"; and that the only remuneration you receive from the firm is a fixed annual fee. Based on these facts, this office is of the opinion that, subject to the discussion below, the Ordinance does not preclude the firm from serving as Dade County bond counsel or underwriter's counsel while you are a member of the Board of County Commissioners.

The Ordinance contains prohibitions which prevent a county commissioner from transacting business with Dade County. Section 2-11.1(c) would prevent you as an individual from engaging in business with the County, and Section 2-11.1(d) would preclude business transactions between the County and any business in which you have a controlling financial interest. These sections of the Code are not applicable because you will not be transacting business with the County in your individual capacity, nor do you have a controlling financial interest in the law firm.

Although the Ordinance does not prohibit the arrangement described in your inquiry, it does impose certain restrictions upon you as a county commissioner.

Initially, you may not participate in any official county action directly or indirectly affecting the law firm. Section 2-11.1(n). Further, you may not use, attempt to use or otherwise exploit your position as a county commissioner to secure special privileges for yourself or the law firm. Section 2-11.1(g).

If the law firm has or acquires substantial business commitments with the County or any of its agencies, you must file a sworn statement with the clerk of the circuit court disclosing your employment with the firm. Section 2-11.1(f). You may not appear before any county board on behalf of a third person nor accept compensation, directly or indirectly, for services rendered to a third person (either the law firm or a client of the firm) who is seeking some benefit from the County or its agencies. Section 2-11.1(m)(1). For example, you could not be compensated in any way for any services which you render to the law firm in connection with any effort on the part of the firm to be listed as bond counsel for Dade County or selected to serve as Dade County bond counsel on any specific transaction.

In addition to the ordinance, I have considered the state Code of Ethics statute, Section 112.311 et seq., Fla. Stat. (1983). Although Section 112.313(7)(a) prohibits a public officer from having any employment or contractual relationship with any business entity doing business with the public officer's agency, that section contains an exemption for members of legislative bodies. The term "legislative body" explicitly encompasses bodies which exercise their authority through the enactment of ordinances. Section 112.313(7)(a)(2). Accordingly, this office is of the opinion that a county commissioner is exempt under the statute.

Additionally, Section 112.3143, Fla. Stat. (1984) prohibits you from voting on any measure which inures to your special private gain. For example, you may not vote on any matter which could result in compensation to you by the law firm. Both state law and county ordinance govern such voting conflicts. The Dade County Code requires you to leave the commission chambers during the consideration of any matter in which you have announced a conflict of interest (Section 2-1, Rule 1.10, Dade County Code), and you are required by state law publicly to disclose the nature of your interest in the matter and file a disclosure statement with the clerk of the board of county commissioners within 15 days after the vote occurs. Section 112.3143, Fla. Stat. (1984).

Finally, I advise you, as I traditionally advise those who seek conflict of interest opinions from this office, that even strict compliance with the statutes and ordinances may not preclude possible public comment.

Robert A. Ginsburg

Chairman ROTH. Now, would you tell us how you are compensated by Broad & Cassel?

Mr. SCHREIBER. I am compensated on an annual basis on a set—call it salary, compensation, a commission. My accountant would be in better position to say the type of—the word, but I am compensated on a yearly basis.

Chairman ROTH. Do you participate as a partner in the profits of this?

Mr. SCHREIBER. No, sir. In my counsel position, and I'm of counsel for a particular reason, because before being able to work out a relationship with Broad & Cassel, the firm wanted to know if, indeed, any of the business they had before the county they still could have before the county if I joined the firm.

Again, in consultation with Mr. Ginsburg——

Chairman ROTH. Mr. Ginsburg being?

Mr. SCHREIBER. The county attorney for the county, clearly indicated that, once again, as long as I have no financial interest, do not share in the profits or losses of the firm, then I could have a relationship with the firm, and the firm could continue to do business with Dade County.

So it's really irrelevant to me whether the firm makes a lot of money or doesn't make a lot of money. I am compensated, having nothing to do with that situation.

Chairman ROTH. So the working relationship with this law firm was done in conjunction with the advice of the county attorney?

Mr. SCHREIBER. Yes, sir, and I might add that everything that I have done since joining the commission in 1976 and joining Broad & Cassel thereafter was done based on, probably, a written opinion from the county attorney and sometimes, at least, an oral conversation that I had with him.

Chairman ROTH. Next, Mr. Schreiber, I would like to ask you some questions about the possible application of a provision of the Florida constitution to your holding the position as Governor of the Postal Service and Dade County commissioner. Are you aware of a provision that states that no person holding a paid U.S. office shall hold a paid State office?

Mr. SCHREIBER. I am aware of a certain provision in the constitution of the State of Florida that does address that topic, yes, sir.

Chairman ROTH. Do you believe that you would be in violation of this provision if you held the position of Postal Service Governor and county commissioner at the same time? If not, why not?

Mr. SCHREIBER. Well, I do not believe that I would be, but that's really not for me to decide, and I did not take that view, because had I had other conclusions drawn, I certainly would have brought it to the attention of the proper authorities, including the White House and what-have-you the moment I felt there was a problem.

I was aware of such a provision in the constitution, and I took a look at it, and I really wasn't quite sure what it meant, and I do not practice law for the county and don't make decisions of law pertaining to myself.

I went to the county attorney, and I asked him would he take a look at this, do some research and just give me an opinion. I didn't want to make a major, if you will, a Federal case out of something if it didn't have to be a Federal case. It took about 2 weeks. He got

back to me, and he said he sees no problem with it whatsoever. Fine. I basically accepted that.

Senator EAGLETON. Do you have a copy of that opinion, Mr. Chairman?

Mr. SCHREIBER. No, that was an oral opinion, Mr. Senator.

Thereafter, in brief conversation I had with just a friend who mentioned, "By the way, did you ever think of that," and I said I did, and the county attorney said OK. So I felt maybe I ought to really get something a bit more tangible. I retained the legal services of Justice Arthur England, who was a former justice of the Florida Supreme Court, now practicing law in private practice in Miami. And I asked him to give me his opinion, his best judgment.

And he has—he has not given it to me in writing. I didn't really think it was necessary. He has indicated that he does not see where that provision applies or would cause any problems if confirmed, once confirmed by the Senate.

Certainly, he indicated to me that until a confirmation takes place, it is basically a moot point. At such time as a confirmation takes place, it only affects the possibility; it could affect, although he does say does not, will not, although it could only affect being able to serve as a Dade County commissioner. It will not in any way affect the ability to serve on the Board of Governors of the U.S. Postal Service.

Chairman ROTH. Let's make sure I understand what you are saying. The individual lawyer that made, that gave this opinion was a former member of the Florida Supreme Court?

Mr. SCHREIBER. Yes, sir, Justice Arthur England. I would say this is just a guess on my part—maybe for the last 2 years has been in private practice, had been one of the most known and recognized judicial experts on the Florida Supreme Court, now in private practice in Miami. He is my lawyer. I have retained him, and he has so advised me as to this provision of the Florida Constitution.

Chairman ROTH. Did he so advise you in writing?

Mr. SCHREIBER. No, he did not.

Chairman ROTH. But if—but when you become a member of the Board of Governors, if there were a violation, it would be a violation of State law. Is there anything in the Federal law that would prevent you from so serving?

Mr. SCHREIBER. No, sir. It is clearly my understanding that if there is any violation of any kind, it would be a violation, if you will, of Florida law, not a violation of State law [sic] and indeed, I believe there has been a written opinion issued, presented to this committee, confirming that aspect of this question.

Chairman ROTH. I have been informed that the committee has received this morning a letter from the law firm of Dewey, Ballantine, which advises the Postal Service Board of Governors. That letter indicates there would be no violation of Federal law in this case. I would like to enter that letter into the hearing record.

Senator EAGLETON. Does the letter also opine on Florida constitutional and Florida State law?

Chairman ROTH. No. As I indicated in my opening statement, I said there would be no violation of Federal law, which I think is the most relevant matter.

Senator EAGLETON. Could we have a copy of that, Mr. Chairman?

Chairman ROTH. Yes, indeed.
[The letter referred to follows:]

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD
1775 PENNSYLVANIA AVENUE, N. W.
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CABLE: DEWBALAW

December 12, 1985

Mr. David F. Harris
Secretary to the Board of Governors
United States Postal Service
Room 10300
475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260

Dear David:

This is in response to your inquiry this afternoon as to whether a Governor of the Postal Service is permitted to hold concurrently an elective office in a state, county or municipal government. As a general matter, federal law does not prohibit such concurrent service.

The Postal Reorganization Act expressly recognizes that a person serving as Governor may also hold certain other offices. Section 205(d) of the Act states:

> "No officer or employee of the United States may serve concurrently as a Governor. A Governor may hold any other office of employment not inconsistent or in conflict with his duties, responsibilities, and powers as an officer of the Government of the United States in the Postal Service." 39 U.S.C. § 205(d).

While barring a Governor from holding federal office, this provision would, apart from that, permit a Governor to hold "any office" not inconsistent or in conflict with his duties as a Governor. In the case of state, county or local office, one would not expect to find any potential conflict with the Governor's postal duties, though any determination on this point would have to be made on a case-by-case basis in light of the responsibilities of the particular office at issue.

Nor does the Hatch Act represent a bar to a Governor's seeking election (or reelection) as a state, county or local official. The Act provides that an employee in an Executive agency may not "take an active part in political management or in political campaigns." 5 U.S.C. § 7324(a)(2). But the Act contains an explicit exemption for

> "an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States . . . in the nationwide administration of Federal laws." 5 U.S.C. § 7324(d).

The Governors fall squarely within the exemption. Of course, a Governor may not use a government office or facilities for partisan political activities, and such activities would have to be kept separate from the Governor's official duties at the Postal Service.

Although federal law does not generally prohibit a Governor from serving concurrently as a state, county or local official, I should note two caveats. First, state and local law should be checked to verify that they do not bar a state or local official from simultaneously holding federal office. Second, a Governor serving concurrently as a state, county or local official must be sensitive, like any other Governor, to possible conflicts of interest (or even the appearance of such conflicts) that may occasionally arise in the course of discharging his official responsibilities in each public office.

I hope that the above information is helpful to you.

Sincerely,

Gerald M. Rosberg

Chairman ROTH. So as I understand the situation, the Postal Service Board of Governors has a letter from their counsel saying there is no conflict with Federal law, and you are testifying under oath that the advice you have received from the county attorney and from your personal attorney, a former member of the Florida Supreme Court, that there is no conflict under the law there; is that correct?

Mr. SCHREIBER. That is correct, that there is no conflict, that I would be able to serve on both boards, and certainly, will be able to serve as a member of the Board of Governors of the U.S. Postal Service.

Chairman ROTH. Let me ask you this question. Let's assume that you become a member of the Board of Governors and subsequently litigation is brought and, for whatever reason, it turns out that the Florida law is otherwise interpreted.

Would you take up whatever steps are necessary to be in compliance with the law?

Mr. SCHREIBER. I will unhesitantly follow the laws of the State of Florida as ultimately to be determined on this issue, if challenged.

Chairman ROTH. Thank you, Mr. Schreiber.

Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman.

At the outset, I will dispose of the line of questioning that I pursued with the two previous witnesses just to establish for the record, Mr. Schreiber's connections with the Democratic Party, and he has had several connections with the Democratic Party. I had it here on a piece of paper, but would you describe for the record, Mr. Schreiber, what your participation has been and any capacity with either Democratic clubs or organizations or honorary members in Democratic clubs or national conventions, things like that?

Mr. SCHREIBER. Yes, sir. I can't be sure of the exact date, but when I was in college and law school, I became a member of the Young Democrats. When I was first registered to vote, I registered as a Democrat, and my registration today is Democrat.

Senator EAGLETON. In Florida, you register under a party affiliation?

Mr. SCHREIBER. Well, Democrat, Republican, or Independent.

Senator EAGLETON. And you registered as a Democrat?

Mr. SCHREIBER. I have been registered in the State of Florida since 197—when did I move? 1969——

Senator EAGLETON. Whatever.

Mr. SCHREIBER [continuing]. As a Democrat in the State of Florida, yes, sir. I was involved in a leadership role when Henry—the late Henry Scoop Jackson ran for the Presidency. I was cochairman of his campaign in Dade County, FL.

Senator EAGLETON. Would that have been, what, about 1976?

Mr. SCHREIBER. That sounds right, but I don't recall. Yes, sir.

Senator EAGLETON. OK.

Mr. SCHREIBER. I also was one of, if not the, prime mover in a draft Ted Kennedy movement in Dade County in 1980. I was—I am an honorary member of the board of the North Dade Democratic Club in North Dade, FL. I'm also a member of the new Democratic Club in my community; Miami Beach Democratic Club; and I guess

basically, any other Democratic club that contacts me and wants my $10 dues, I join.

I'm also a member of a luncheon forum called the Tiger Bay Club, which is a Democratic club. I also attended a number of State Democratic conventions, and I believe, if my memory serves me correctly, I was an alternate delegate to the 1980 Democratic Convention. I think it was in New York.

Senator EAGLETON. OK. You were an alternate delegate to the Democratic National Convention?

Mr. SCHREIBER. That is correct.

Senator EAGLETON. I will ask, then, the catchall question at the end that I asked the other two gentlemen. Come 1988, subject to the personalities that are involved in that campaign, subject to the platforms and the philosophies that are enunciated, you would still consider yourself to be a Democrat, reserving the right, though, to vote your conscience and support the candidate as you see fit?

Mr. SCHREIBER. Absolutely.

Senator EAGLETON. Well, that disposes of that.

Now, let's move on to this constitutional provision. Let me read it into the record. It is article 2, subsection 5, subsection A of the Florida constitution.

> No person holding any office of emolument under any foreign government or civil office of emolument under the United States or any other State shall hold any office of honor or emolument under the government of this State.

That is the provision.

You have a verbal opinion from the county attorney of Dade County that simultaneous service on the Postal Board of Governors and Dade County Commission would not be violative of that provision, correct?

Mr. SCHREIBER. That is correct.

Senator EAGLETON. In the trade, we call that a horseback opinion, right?

Mr. SCHREIBER. I've never used the expression.

Senator EAGLETON. Well, we do out in Missouri. [Laughter.]

We are a western State. When you return to Florida, will you ask the county attorney to write that opinion as a full-blown written opinion?

Mr. SCHREIBER. Will I ask?

Senator EAGLETON. Yes.

Mr. SCHREIBER. Yes, certainly.

Senator EAGLETON. And will you supply us with a copy of that full-blown written opinion?

[The opinion, dated December 17, 1985, follows:]

MEMORANDUM

100.01-14

TO: Hon. Barry D. Schreiber
County Commissioner

DATE: December 17, 1985

SUBJECT: Article II, Section 5(a), Florida Constitution

FROM: Robert A. Ginsburg
County Attorney

You have inquired whether your service on the Board of Governors of the U. S. Postal Service would be violative of Article II, Section 5(a), Florida Constitution--the "dual office holding" provision. At this time we are of the opinion that Article II, Section 5(a) would not prohibit your serving as a member of both the Board of County Commissioners of Dade County and the Board of Governors of the U. S. Postal Service.

Article II, Section 5(a) states as follows:

> (a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, constitutional convention, or statutory body having only advisory powers.

The crucial phrase is "civil office of emolument under the United States...." Based on the information we have received to date, we have not found any statutory or case law that would indicate that service on the Board of Governors of the United States Postal Service is a civil office of the emolument under the United States.

Robert A. Ginsburg
Dade County Attorney

RAG/rk

Mr. SCHREIBER. Certainly, although—well, I understand. I will ask the county attorney to do so. Whether the county attorney wishes now to get involved on an official basis in this kind of controversy, I couldn't say, but I would certainly ask the county attorney.

Senator EAGLETON. Well, he has written you a lot of opinions before, hasn't he?

Mr. SCHREIBER. That is correct, but in this particular case, I also have a private attorney. On that basis, the county attorney——

Senator EAGLETON. We will get to him next. But the county attorney has written you opinions about your association with "something" and Cassel?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. Broad & Cassel?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. And has written you other opinions. Why wouldn't he write you an opinion on this if you have already talked to him about it?

Mr. SCHREIBER. All I am saying, Mr. Senator, is I will ask the county attorney to give an opinion.

Senator EAGLETON. OK. That's fine. Would you also ask your private attorney, the former Justice of the Supreme Court, to reduce his opinion to writing?

[The opinion, dated January 10, 1986, follows:]

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JULIE A. S. WILLIAMSON

January 10, 1986

Commissioner Barry Schreiber
1390 N.E. 173rd Street
North Miami Beach, Florida 33162

Dear Commissioner Schreiber:

You have requested my opinion as to whether your appointment by the President of the United States to the Board of Governors of the United States Postal Service will require your vacating the office of Dade County Commissioner by reason of the prohibition against dual officeholding contained in Article II, Section 5(a) of the Florida Constitution. I understand that my opinion on this issue may be furnished to the United States Senate in connection with your confirmation hearings, and that senators may want to know something about me when considering my views. For that reason, I have attached to this letter a copy of my biographical sketch which appears in the current edition of Who's Who.

As an answer to your inquiry, I would be comfortable asserting in any judicial forum that your appointment to the Postal Service will not violate Article II, Section 5(a), so as to require your vacating the county commission seat you now hold. There is no direct precedent under Section 5(a) of our Constitution, or under any of its predecessor provisions, on precisely this question, however. Consequently, no one can predict with certainty how the Florida courts would rule if asked to apply the provision to your situation. It seems clear to me, however, that the better reasoned view is that this constitutional ban would not apply in your present situation.

Article II, Section 5(a) of the 1968 Florida Constitution states:

> No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, constitutional convention, or statutory body having only advisory powers.

Your appointment to the United States Postal Service Board raises three obvious areas of inquiry under this provision. The first is whether federal officeholding is a disqualifying condition only for state-level officers, as distinct from county-level and municipal officers. The plain language of the Constitution would seem to suggest that result, as noted by the Congressional Research Service of the Library of Congress in an opinion issued on December 12, 1985. The second area of inquiry is whether the duties of governor of the United States Postal Service are advisory only. The third is whether a board position with the Service is an "office of emolument under the United States."

I have addressed only the first concern. The second requires an interpretation of federal law which others are more qualified to give, and the third has already been considered and addressed by the office of the Dade County Attorney and the Congressional Research Service.

Florida's constitution has long contained a "dual officeholding" prohibition. Section 5(a) of Article II, as it appears in the 1968 Constitution, had roots in Article XVI, Section 15 of the 1885 Constitution; Article XI, Section 14 of the 1865 and 1861 Constitutions; and Article XI, Section 18 of the 1838 Constitution of the Territory of Florida. (For some reason, a similar provision did not appear in the 1868 Constitution.) I have reviewed each of these provisions, the Journals of the proceedings of the Constitutional Conventions of 1838, 1885 and 1968, and all relevant cases and attorney general opinions under these constitutional provisions. Without ladening this letter with the minutiae of my analysis,

my conclusion from these materials is that two distinct purposes were intended to be served by what has become the two distinct sentences in Section 5(a), and neither purpose is served by applying that section to your situation.

The first purpose was to bar simultaneous officeholding in the government of the United States and in the government of Florida at the state level (initially meaning only in the state legislature, or under the state legislative branch). This concern is reflected in the first sentence of Section 5(a). The second purpose was to prevent simultaneous officeholding inside the state itself. The language of the second sentence, of course, reflects this concern. The differentiation in these purposes, both in terms of the language used to convey them and in their conceptual underpinnings, does not lend itself to any cross-over between the two distinct prohibitions.

As regards the language of the Constitution, the phrase "government of this state," or "government of the state," appears in both the first and second sentences. As written, that phrase in the second sentence can only mean state-level officeholding, as it is there contrasted with officeholding in other levels of government within Florida -- the counties and municipalities. (The bar against municipality officeholders was added by the 1968 Constitutional Revision Commission.) It is an obvious tenet of constitutional construction that a phrase used in two places in the same constitutional provision is given a consistent meaning, absent evidence to the contrary. As no such evidence appears here or in the historic materials on this provision, it appears that federal officeholding is only prohibited for those who hold office at a state level, as opposed to local government offices.

The Florida Constitution is not a document interpreted or construed simply from its verbiage. The meaning of this organic document derives from the content and context of each provision, and the courts will analyze and consider, when available, indicia of intent such as the goal of the framers of a particular provision, the information given the electorate when the provision was presented to them for adoption, and the evil (if any) which the provision sought to remedy. See, for example, Plante v. Smathers, 372 So.2d 933 (Fla. 1979). To the extent I have been able to find these indicators, they too point to the dual and distinct purposes which the bare words in Section 5(a) convey. In fact, the historic materials are so

consistent in this regard that were there no judicial or executive pronouncements on Section 5(a), I would conclude without hesitation that Section 5(a) has no application to county officials who hold or are appointed to coextensive federal offices.

There are, regrettably, both judicial expressions and attorney general pronouncements with regard to Section 5(a) and its predecessors which are troublesome. None of these articulations, however, has directly considered whether the phrase "government of this state" in the first sentence of Section 5(a) encompasses officeholding at the county level. A few seem to have assumed that to be the case (see In Re Advisory Opinion of the Governor, 8 So.2d 26 (Fla. 1942), and Atty. Gen. Opin. 051-468, reported in the 1951 compiled opinions of the Attorney General at page 61), but I can find no evidence that anyone involved in these matters either raised or considered the disparate objectives of preventing, on the one hand, external (federal vs. state) conflicts of interest and forbidding, on the other hand, internal (state vs. local government) conflicts of interest.

More importantly, in each instance where these assumptions were made, the particular proceeding was non-adversarial. That is, neither advisory opinions to the governor from individual justices of the Florida Supreme Court, nor advisory opinions issued by the attorney general, at that time, provided a format for views to be presented other than those offered by the person requesting the information. See, Petition of Kilgore, 65 So.2d 30, 31 (Fla. 1953) (concurring opinion of Terrell, J.). In any event, under Florida law neither form of communication has the binding force of legal precedent. See, Petition of Kilgore, supra at page 31 ("[Advisory opinions to the governor] are what the name implies, 'advisory' only. They are much like opinions from lawyer to client ...."); Collins v. Horten, 111 So.2d 746, 751 (Fla. 1st DCA 1959) ("[Advisory opinions to the governor] do not have the force of legal precedent and are not binding on the court itself."); Richey v. Town of Indian River Shores, 337 So.2d 410, 414 (Fla. 4th DCA 1976), aff'd 348 So.2d 1 (Fla. 1977) ("Opinions of the Attorney General [are] not legally binding on the courts....").

The seeming assumption of some former justices that county officeholders cannot also hold federal office is contradicted, moreover, by other expressions of the justices,

in the same type of proceeding, which strongly suggest that the language of Section 5(a) conveys precisely what its evolutionary history suggests -- namely, that "government of the state" means only state-level officeholding. For example, six of the seven justices said in Advisory Opinion to the Governor, 1 So.2d 636, 638 (Fla. 1941):

> A State officer is one . . . whose field for the exercise of his jurisdiction, duties and powers is co-extensive with the limits of the State and extends to every part of it.

In so stating, they were quoting from the court's earlier decision in State ex rel. Clyatt v. Hocker, 39 Fla. 477, 22 So. 721 (1897). One must conclude that there is no clear interpretation of Section 5(a) on your situation in the views of former Florida justices, none of whom in any event presently serve on the court.

As noted earlier, the appropriate methodology for answering a question such as the one you have posed is to resort to the intent of the framers of the constitutional prohibition, and to weigh the purposes for which the provision was drawn against the situation for which the inquiry is made. That exercise leads only to the conclusion that service on the board of the Postal Service will not create a conflict of interest in the performance of your duties as county commissioner, and vice versa. Dual officeholding is barred by the constitution in order to prevent conflicts of interest whenever the respective duties of office are inconsistent. Bath Club, Inc. v. Dade County, 394 So.2d 110, 112 (Fla. 1981), addressing the governing philosophy of Section 5(a) in the context of the intra-state prohibition. I conclude, therefore, that Section 5(a) of Article II is no bar to your acting in both capacities.

In my research I found one other indicia which suggests that federal officeholding of the type being contemplated has not been thought to be prohibited. Section 1.05(B) of the Dade County Home Rule Charter requires forfeiture of a county office by anyone who holds an elective office in the federal system. This provision does not bar a county official from holding an appointive office in the federal system. As this is the only relevant office forfeiture provision of the Dade County Charter, it seems apparent that the drafters of the county charter did not consider appointive federal office to violate the ban in the constitution. This charter is, of course, itself a part of Florida's Constitution. See Article VIII, Section 6(e) of the 1968 Constitution.

Respectfully yours,

Arthur J. England, Jr.

Arthur J. England, Jr.

Mr. SCHREIBER. Yes, I shall, and unless he has any objections to——

Senator EAGLETON. Well, what objection might he have?

Mr. SCHREIBER. Well, I don't know. He may have an objection, but I will certainly ask him. But he is my attorney. If he chooses not to put his reasoning into a letter as opposed to simply stating his conclusion, that will be his decision to make.

Senator EAGLETON. Would you then inform the committee, either majority or minority counsel or both, as to the outcome of these discussions? Would you inform us if the county attorney says he doesn't want to put it in writing? Tell us that. If your private attorney doesn't want to put it in writing, tell us that.

Would you also tell them, and we will hand you a copy, that the Legal Division of the Library of Congress has ruled, in writing, that you cannot simultaneously hold both positions, and the opinion speaks for itself. We will give you a copy. Would you give a copy of that opinion to both your private attorney and to the county attorney?

Mr. SCHREIBER. Certainly.

Senator EAGLETON. I ask that the Library of Congress opinion be made part of the record, Mr. Chairman.

Chairman ROTH. Without objection.

[The opinion referred to follows:]

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

December 12, 1985

TO : Senate Governmental Affairs Committee
Attn: Gary Zizka

FROM : American Law Division

SUBJECT : Dual Federal/State Officeholding Provision of Florida Constitution

This memorandum briefly addresses the question whether a provision of the Florida Constitution precludes appointment of a county official to a position on the Board of Governors of the United States Postal Service.

Article 2, § 5(a) of the Florida Constitution provides in part: "No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this State." It would seem that under Florida law, a county office such as county commissioner would be deemed an "office of honor or of emolument under the government of this state." The constitutional provision in Article 2, § 5(a), in addition to its prohibition on dual state and federal employment, also prohibits holding "more than one office under the government of the state and the counties and municipalities." This provision might be interpreted as distinguishing between an "office under the government of the state" and a county or municipal office. However, the distinction seems only to apply to this intra-state dual office holding prohibition. Florida court opinions and state attorney general opinions have at

least implicitly applied the prohibition on dual federal/state office holding to county and municipal office holders. Thus, in In re Advisory Opinion to Governor, 8 So. 2d 26 (Fla. 1942), the State Supreme Court held that, but for an exception for military service, the prohibition on state/federal dual office holding, would be applicable to a county sheriff and County Superintendent of Public Instruction serving in the military reserves. See also, In re Advisory Opinion to the Governor, 9 So. 2d 172 (Fla. 1942); Bath Club, Inc. v. Dade City, 394 So. 2d 110, 112 (1981). The state attorney general has also held that a person may not simultaneously hold the office of justice of the peace in a county and United States Commissioner. 1951 Op. A.G. 61. Thus, the phrase "any office of honor or of emolument under the government of this state" would seem to extend to county and municipal officers and not be limited to holders of statewide offices.

The next question is whether a position on the Board of Governors of the United State Postal Service is, for purposes of the Florida constitutional prohibition on dual office holding, a "civil office of emolument under the United States." A "civil office" is usually viewed as an office that pertains to the exercise of the powers and authority of the particular government involved. It is frequently distinguished from a mere employee or a military officer. See, Advisory Opinion to Governor, 1 So. 2d 636 (Fla. 1941); State ex rel. Holloway v. Sheats, 83 So. 508 (Fla. 1920). "An office is a public station, or employment, conferred by the appointment of government. The term embraces the idea of tenure, duration, emolument, and duties." United States v. Hartwell, 73 U.S. 385, 393 (1867).

The Board of Governors of the Postal Service is comprised of eleven members, nine of which are appointed by the President by and with the advice and consent

of the Senate and two of which are appointed by the other appointees for fixed terms. 39 U.S.C. § 202. The Postal Service, which the Board oversees, is "an independent establishment of the executive branch of the Government of the United States." 39 U.S.C. § 201. Members of the Board of Governors receive an annual salary as well as per diem compensation. 39 U.S.C. § 202. The Postal Service is not a private corporate entity but rather is an establishment of the United States Government. Compare, 42 Op. A.G. 165, 169 (1962) (incorporators of communications satellite corporation not "officers of the United States"). Service on the Board of Governors would, therefore, seem to qualify as the holding of a "civil office of emolument under the United States."

In conclusion, the prohibition on dual federal/state office holding in Florida Constitution Art. 2, § 5(a) would seem to be applicable to a Florida County Commissioner nominated as a member of the Board of Governors of the United States Postal Service.

Richard Ehlke
Specialist In American Public Law
American Law Division
December 12, 1985

Senator EAGLETON. And the opinion discusses Florida law. Bear in mind the Dewey, Ballantine letter—very prestigious firm, Dewey, Ballantine—the Dewey, Ballantine letter very adroitly avoids the question of Florida law. They focus their two-page opinion on the fact that they do not find, based on their research, a Federal statute, a Federal statute dealing with dual occupancy of public offices.

But give me the letter. Here it is. They put in this caveat. Senator Roth read it, and I would like to reread it. "I should note two caveats," says Dewey, Ballantine. "First, State and local law should be checked to verify that they do not bar a State or local official from simultaneously holding Federal office."

So Dewey, Ballantine leaves that question open and says it should be checked, and I agree it should be checked. The Library of Congress has already checked it. They find that under the clear wording of the constitutional provision previously read that the Postal Board of Governors is a Federal office of emolument. You are paid $10,000 a year, a Governor is, out of the Treasury. You get per diem when you come to Washington out of the Treasury. You get reimbursement for expenses, hotels, and the like of that out of the Treasury. The Postal Department is a Federal entity. We appropriate billions of dollars to it every year.

So that is a Federal job, part time, but nonetheless, Federal. And they also rule, under Florida State law previously decided that a Dade County Commissioner is under the government of the State of Florida, which is a self-evident, obvious truth.

Dade County is a home rule county, but it nevertheless is under the government of the State of Florida, and they cite various opinions, et cetera.

Now, there is a way to resolve this, and indeed, this matter should have been resolved before this, and this hearing need not have ever taken place. I urged this committee to delay today's hearings so that we could tidy up some more facts, pull some more things together and tidy up this constitutional issue.

I even had to go so far, because I couldn't talk to a Senator, I even had to go so far as to urge a staff member on Wednesday to delay it. I said, "Why go through this hearing when we can get this matter resolved?"

No, it had to be held on Friday. So we are ready. We are ready. We are going to go ahead at it; we are going to go full bore, but this hearing need not have taken place.

So I ask you this, Mr. Schreiber. Is it your intent, if you were to be confirmed by the Senate, your firm intent to simultaneously hold both positions, Commissioner and member of the Board of Governors?

Mr. SCHREIBER. It should be—will be my privilege to serve on the Board of Governors of the U.S. Post Office, and I shall comply with the laws of the constitution of the State of Florida when they are ultimately determined by a court of competent jurisdiction.

Senator EAGLETON. Of course, that's not an answer. I will get it this way. Suppose you are sworn in and you come to Washington and you have a swearing in ceremony. And by the way, you take an oath as a member of the Board of Governors, and you also take an oath to support the Constitution. It implies the ethical stand-

ards of the Board of Governors, and I will have your lawyers look at 39 CFR 447.12 I will give you that later.

But you take an oath to support the Constitution of the United States. Is it your intent, when you take that oath, to resign as Dade County Commissioner?

Mr. SCHREIBER. No, sir.

Senator EAGLETON. No, sir; is that right?

Mr. SCHREIBER. No, sir.

Senator EAGLETON. Is it your intent to hold both offices simultaneously? Is that your intent?

Mr. SCHREIBER. If the laws of the State of Florida permit me to hold both positions, I shall. If the laws of the State of Florida will not permit me to hold both positions, I shall not. I shall fully comply with the Constitution——

Senator EAGLETON. OK. As things stand now, comforted by your horseback opinion from your lawyer and by the horseback opinion from the county attorney, it is your intent today not to resign as Dade County Commissioner on the day you take the oath for the Board of Governors.

Mr. SCHREIBER. There is no legal requirement that I'm aware of that I would have to.

Chairman ROTH. Would the Senator yield? Because I think for the purposes of clarification, it should be pointed out that the Congressional Research Service letter very carefully, in every instance, says, in drawing a conclusion, that, for example, "Florida court opinions and State attorney general opinions have, at least implicitly, applied the prohibition on a dual Federal-State official holding county and municipal office holdings."

And further down, it states that "any office of honor or of emoluments under a government of this State would seem to extend." It doesn't say it does. It says, "would seem to extent to the county and municipal office."

And again, on the next page, it says, "service on the board of governors would therefore seem to qualify as a holding of a civil office or emolument."

Finally, it says, "In conclusion, the prohibition on a dual Federal-State office holding on Federal constitutional article 258 would seem to be applicable to a Florida—"

So, again, I have to point out that this is another, I guess, horseback opinion. It draws certain conclusions, but in every instance, very carefully qualifies it.

Senator EAGLETON. Thank you, Mr. Chairman. It is written in the vernacular of the Law Division of the Library of Congress. It is written, however. You may want to call it horseback, but at least they have the courage to put it to writing.

We have before us two other whispered opinions, and we may not even be able to get those in writing because the county attorney may not want to put it in writing, and the private attorney may not want to put it in writing.

So at least we have it in writing. But we can resolve this. We can resolve it in probably fairly short order.

Will you abide by a ruling by the attorney general of the State of Florida as to the legality of your holding simultaneously both offices?

Mr. SCHREIBER. Mr. Senator, I do not intend any disrespect whatsoever in answering your question. As a lawyer, as an elected official, the interpretation of our laws and the ultimate decision as to what the laws that govern this country are that govern the State of Florida are made by the courts, and I will unhesitantly comply with the constitution and the laws of the State of Florida as ultimately determined by a court of competent jurisdiction.

Senator EAGLETON. So if an opinion of the attorney general of the State of Florida is requested through proper channels, and if the attorney general of the State of Florida rules that you cannot, under the Florida constitution, hold both offices simultaneously, you will see fit to ignore that opinion and continue to hold both offices?

Mr. SCHREIBER. I don't know where it says that the opinion of the attorney general of the State of Florida is binding law in the State of Florida.

Senator EAGLETON. It is an opinion.

Mr. SCHREIBER. It is an opinion.

Senator EAGLETON. I used to be attorney general of the State of Missouri.

Mr. SCHREIBER. It is an opinion.

Senator EAGLETON. In terms of trying to efficaciously and responsibly dispose of that, why wouldn't you say here and now that you are willing to abide by a ruling of the highest legal official of the State of Florida?

Mr. SCHREIBER. What I think I would be doing to the citizens of Dade County is a disservice. They have elected me to serve a full 4-year term. I intend to conclude that term.

I also will stand for reelection next year, in 1986. Therefore, I owe the people of Dade County to conclude my term, and if they see fit to return me to office, to conclude my next 4-year term. And therefore, unless a court of competent jurisdiction orders me to resign, there would be no reason for me to do that. I have an obligation to the people of Dade County.

Senator EAGLETON. You wish, then, to press it to court. In Missouri we have an action called quo warranto, which tests the legal authority of a public official to remain in office. It is your intention that the only way you will see fit to remove yourself as Dade County Commissioner and simultaneously hold the position on the Board of Governors is for a suit to be brought, either by a prosecutor or a taxpayer or whoever is authorized under Florida statute to bring such a suit to oust you from the Dade County Commission?

Mr. SCHREIBER. I believe that I am entitled and the citizens of Dade County are entitled to due process of law.

Senator EAGLETON. And if an ouster suit is brought, you then will contest it?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. And if a decision is rendered by the trial court adverse to you, will that be dispositive of the matter in your mind?

Mr. SCHREIBER. That will be up to my attorney to so advise.

Senator EAGLETON. But the attorneys might say, "We will appeal it to a higher court."

Mr. SCHREIBER. I can't conjecture what my attorney might say.

Senator EAGLETON. So if your attorney says, "Let's appeal," you will appeal.

Mr. SCHREIBER. I guess it also depends on how much he wants to charge me for the appeal.

Senator EAGLETON. We will get into your fees later on. You are very interested in fees, so I don't blame you for being cognizant of what he might charge you. So all of this time, we are going to have litigation in Florida, seeking to oust the Dade County Commissioner, while you are serving on the Board of Governors of the Postal Service. Isn't that a pretty sticky mess?

Mr. SCHREIBER. I don't believe so. During that period of time, I will be serving to the best of my ability and contributing to the Board of Governors of the U.S. Postal Service, and I will also be serving my constituents in Dade County, as I have so ably done since 1976.

Senator EAGLETON. And spending a good deal of time in court seeking to prevent yourself from being ousted.

Mr. SCHREIBER. I can't comment on how much time I will spend in court, but it will certainly not affect the time that I will have to spend with the Postal Service or time that I have to spend on my political duties in Dade County.

Senator EAGLETON. Do you know the attorney general of Florida?

Mr. SCHREIBER. I know the Attorney General, Jim Smith, that is correct.

Senator EAGLETON. Is he considered to be a person of good reputation, decent legal qualifications?

Mr. SCHREIBER. I couldn't comment one way or the other.

Senator EAGLETON. Is his legal staff considered to be a competent legal staff?

Mr. SCHREIBER. I could not say. I only know that Mr. Smith was a candidate for lieutenant governor and decided not to run for that particular position, so he is an elected official of the State of Florida, as well.

Senator EAGLETON. Would you be helpful to us in trying to get an opinion from the State attorney general? See, I can't ask for one. I'm from Missouri. Only certain people in the State of Florida are eligible to ask. Would you be helpful to us in asking for an opinion from the State attorney general?

Mr. SCHREIBER. I certainly would consider being helpful and asking him for an opinion of the attorney general of the State of Florida if my attorney says that I should so be helpful.

Senator EAGLETON. All right. Report back to us, then, if either the county attorney or your private attorney will submit to us their opinions in writing and carry with you, if you will, a copy of the Library of Congress opinion?

I reserve the right to insert other legal opinions into the record, Mr. Chairman, if you will so permit. Has the committee retained Dewey, Ballantine? I hope we have.

Chairman ROTH. No. That was an opinion of the Postal Service.

Senator EAGLETON. Oh, the Postal Service retained them. I think it would be helpful if we got Dewey, Ballantine to rule on caveat No. 1. So would you have any objection if I asked the Postal Service, or could we jointly ask the Postal Service to give us their opinion on caveat No. 1: "First, State and local law should be checked

to verify that they do not bar a State official or local official from simultaneously holding Federal office"?

Chairman ROTH. Well, I will take it under advisement. I will not agree to it at the current time.

Senator EAGLETON. I am amazed, Mr. Chairman.

Chairman ROTH. Let me conclude, Mr. Eagleton. Let me point out, No. 1, that there is no Federal law—so far I haven't heard you contest that—limiting anybody such as Mr. Schreiber from holding the two positions, so that I am not persuaded at this juncture that this is a matter of such relevance that we should make that request, particularly in view of the fact that the candidate, the nominee has made it very clear that he wants to, of course, maintain his constitutional rights; that he is perfectly willing to see it go up through the courts; and once the Florida law is determined, definitively by the courts, possibly the Supreme Court, he will abide by that decision.

I am not interested in having this politicized and extended over an indefinite period of time. So that I don't see another opinion being that important. The only way this question is going to be finally resolved is through the courts of Florida. The nominee has indicated that he will abide by that decision.

So I will take your proposal under advisement, but at the moment, I reserve the right to reject it.

Senator EAGLETON. Well, Mr. Chairman, just a few minutes ago you were basking in glory reading from the Dewey, Ballantine, a wonderful firm named after Thomas E. Dewey, Hugh Root used to be a member of that firm. It was one of the most prestigious firms in the world, and I think, as a courtesy, that firm, now that they have gotten into the law on this—you see, they pulled the books off the shelf, and they don't have to start ab initio. I think as a courtesy to this committee, that firm, probably on a pro bono basis, would be willing to answer caveat No. 1, and you and I know, Mr. Chairman, what the answer is going to be.

You and I know what the answer is going to be. He will be in violation of the Florida constitution. We have got to know that.

You see, before we can vote this man out, we have got to know, under the code of ethics that applies to the Postal Service, whether he will, in terms of 39 CFR 447.12, uphold the constitutional laws and legal regulations of the United States and of all governments therein and never be a party to their evasion. That is the hook, the legal hook that brings in a violation of Florida law and makes it a violation of ethics, a violation of ethics, not an indictable offense, not a penitentiary offense, but a violation of ethics for him to serve in patent violation of Florida law.

Dewey, Ballantine can help us out of this. I think Dewey, Ballantine will put it in writing, unlike the county guy down there in Florida. He might not want to put it in writing. Not like Mr. Schreiber's private attorney either, maybe he doesn't want to put it in writing. Dewey, Ballantine likes to put things in writing. I think it is just very simple that we ask them through the Postal Service, "Will you answer caveat No. 1?"

What is the harm? What is the game? What is the shell game about? And they could answer it in about 3 days. They got the

books off the shelf. Can't we do that, Mr. Chairman? This nomination is not going to come out of committee.

Chairman ROTH. I have not changed my opinion. Just let me say, again, the distinguished Senator from Missouri is not going to be satisfied with another opinion, nor am I.

The only way the basic question is going to be resolved is by the courts of Florida. I must object to characterizing this as a patent violation. It is a legal question at issue with which well-meaning, well-intentioned people can disagree. Basic to our form of government is the right to try through the courts. That is a constitutional right, and I think it would be very unfair to try to characterize it as otherwise.

So, frankly, to get another opinion means that somebody else on one side or the other is going to come up with another request.

But the key question here is whether or not, under Federal law, he is qualified to serve here, and I have heard no dispute, no question raised with respect to that.

The only question is whether or not he may or may not be in compliance with Florida law. The gentleman, in what I consider to be a very honorable way, has said that if the courts rule against him that he will comply fully with the law. That is his right. I think it is his constitutional right, and there is no way you can resolve it, frankly, unless he takes that office and becomes a member of the Board of Governors. And he has assured us, I think, in an honorable manner, that if he becomes a member of the Board of Governors and it is litigated and determined that it is not proper under constitutional law, then he will abide by the decision fully and wholeheartedly.

Is that correct, Mr. Schreiber?

Mr. SCHREIBER. Absolutely, yes.

Senator EAGLETON. I will make this proposal to you, Mr. Chairman. I propose that we seek, through proper channels, an opinion of the attorney general of Florida and that if that opinion says he cannot simultaneously hold both offices, we will find that opinion as being dispositive of the matter and vice versa. We can't bind the other members. But I will try to bind you. Will you abide by an opinion of the attorney general of the State of Florida, whichever way it goes?

Chairman ROTH. Absolutely not. I want to make it very clear——

Senator EAGLETON. Who knows more about Florida law than the attorney general of Florida?

Chairman ROTH. Mr. Eagleton, let me complete my statement.

The attorney general is an elected official; is that correct?

Mr. SCHREIBER. Yes, sir.

Chairman ROTH. I don't know him. I am sure he is a fine, honorable man. I don't know whether you have had any contact or your staff has had any contact.

Senator EAGLETON. Your staff has.

Chairman ROTH. Or my staff has.

Senator EAGLETON. It is Ms. Fox.

Chairman ROTH. Let me go back to the observation I made earlier. We can always seek another opinion. The only way that this can be fairly dealt with is through the courts, and the only way

that can be resolved is by Mr. Schreiber becoming a member of the Board of Governors.

So that I am not willing to agree with such a proposal.

Senator EAGLETON. You don't know the attorney general of Florida. Do you know Thomas E. Dewey and Hugh Root and Mr. Ballantine?

Chairman ROTH. Mr. Eagleton, I am anxious to go ahead with this matter.

Senator EAGLETON. Let the record show that it was your staff that first contacted the attorney general of the State of Florida, Ms. Fox. Can we stipulate that?

Chairman ROTH. But not with the understanding that what the attorney general stated would be dispositive of the matter.

Senator EAGLETON. No, but didn't the contact talk over a little Florida law?

Chairman ROTH. Absolutely.

Senator EAGLETON. She wanted to know what the attorney general thought about Florida law, and so she called him, which is an American right. We are going to find out what the attorney general thinks about Florida law, even without your cooperation, Mr. Chairman, even without Mr. Schreiber's cooperation. I think it is relevant. I am going to also try to find out what Dewey & Ballantine think. If I have to pay for an opinion myself, I will try to get caveat No. 1 answered.

Because, Mr. Chairman, it is untenable; it is untenable to ask the U.S. Senate to confirm to Federal office an individual who will be immediately subject to an ouster suit, immediately subject to an ouster suit in his home State and will have to spend a considerable amount of his time defending his title to office in litigation seeking to oust him, which he more than likely will appeal if his attorney advises him so. It is untenable, Mr. Chairman; it is unheard of; it is unprecedented; it is unique; it has never occurred before, and we can never confirm this man under those circumstances.

But I will move on. If that is the kind of Board of Governors that you think ought to serve and under those circumstances, Mr. Chairman, I am a bit surprised.

Chairman ROTH. Just let me say that I think every citizen is entitled to his constitutional rights, and if there is a substantial question, it should be resolved. But in no way should an individual be rejected because he is trying to comply where the law, particularly where this is a matter of Florida law and not a matter of Federal law.

But in any event, Mr. Eagleton, I would like to proceed, because——

Senator EAGLETON. We will proceed. Let's move on to your relationship with Broad & Cassel. Senator Roth inquired in brief into that, and I would like to probe that a little bit further.

You joined Broad & Cassel on May 1, 1983 or thereabouts, correct?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. And the first year that you worked there, of counsel, was a partial year and you earned $47,000 in calendar 1983 for that, 8 months?

Mr. SCHREIBER. I'm a little confused on how to answer. My year with Broad & Cassel begins on May of—began on May 1983 and continues through April and then continues that way. That's the fiscal calendar I am working on.

Senator EAGLETON. Well, I am working on tax calendar years. You have sworn by your income tax returns?

Mr. SCHREIBER. Oh, yes, sir. Yes.

Senator EAGLETON. If they reflect you made $47,000 in calendar 1983, taxable income from Broad & Cassel, that would be accurate?

Mr. SCHREIBER. That would be May, June, July, balance of—yes, yes. Whatever has been submitted, I stand by. I don't have the papers in front of me and can't comment one way or the other. Whatever is there, I stand by.

Senator EAGLETON. And $97,000 from your tax return for 1984 from Broad & Cassel.

Mr. SCHREIBER. If that is what it says, it would have been a full 12 months, yes, sir.

Senator EAGLETON. OK. In 1985, it appears that it will be $115,000.

Mr. SCHREIBER. Has that been filed yet?

Senator EAGLETON. That was supplied by Mr. Broad. Would you dispute that?

Mr. SCHREIBER. No, no, absolutely not. Absolutely not.

Senator EAGLETON. So your income is rapidly escalating at Broad & Cassel?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. How do you describe your role at Broad & Cassel? Are you a trial lawyer or a tax lawyer or patent lawyer? What are you?

Mr. SCHREIBER. I am a general lawyer.

Senator EAGLETON. Are you a business getter?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. Is that how you generally speak of yourself, as a person who is good at getting business?

Mr. SCHREIBER. I would like to think so, yes, sir.

Senator EAGLETON. And you would agree with Mr. Broad if he said that that is your asset to the firm, that you get business?

Mr. SCHREIBER. One asset of the firm? An asset?

Senator EAGLETON. Yes.

Mr. SCHREIBER. Oh, yes, sir.

Senator EAGLETON. You are not a book lawyer, you said that earlier, in terms of looking up what this constitutional provision——

Mr. SCHREIBER. No, but I do some research, and I do handle some cases, yes, sir.

Senator EAGLETON. Did you ever try a case for Broad & Cassel?

Mr. SCHREIBER. Yes, I did, one about 2 weeks ago.

Senator EAGLETON. Two weeks ago.

How is this salary at Broad & Cassel determined? Is it a salary?

Mr. SCHREIBER. It is a set compensation.

Senator EAGLETON. It is a set compensation. Is it a salary or is it a commission?

Mr. SCHREIBER. It is not a salary in the sense that withholding is taken out of it. It is a commission and/or compensation, which is paid in full to my professional association, Barry D. Schreiber, P.A.

All my legal fees earned are paid from Broad & Cassel, from—paid from Schreiber & Steinberg, which the record indicates I'm a partner, are paid into my P.A.

Senator EAGLETON. On your income tax returns for 1983 and 1984, didn't you describe your receipts for Broad & Cassel as a commission?

Mr. SCHREIBER. I have to defer, unfortunately. My accountant is not here, but we had discussed this before, and whatever accounting method my accountant utilized, he made that decision. There was some discussion with the Internal Revenue Service relative to that. We have disposed of that matter. We have ironed it out between Internal Revenue. They have accepted what we have done in the past, and my accountant has been convinced we will do it differently in the future.

I can only explain to you the facts and not the terminology. I am not an accountant.

Senator EAGLETON. Yes. I ask unanimous consent to place in the record a letter from Eugene Rosenberg, Certified Public Accountant, Miami Beach, to Barry Schreiber, October 29, 1985. Do you all have that?

I ask unanimous consent that it be placed in the record. Any objection?

Chairman ROTH. Without objection, so ordered.

[The letter referred to follows:]

L81073

EUGENE ROSENBERG, P. A.
CERTIFIED PUBLIC ACCOUNTANT
16666 N. E. 19th AVENUE
NORTH MIAMI BEACH, FL 33162

305-947-8011

Joseph S. Lania
Certified Public Accountant

Member
American Institute and
Florida Institute of
Certified Public Accountants

October 29, 1985

Mr. & Mrs. Barry D. Schreiber
1390 N.E. 173 Street
North Miami Beach, FL 33162

COPY

Dear Mr. & Mrs. Schreiber:

You have asked me why Mr. Schreiber's compensation from Barry D. Schreiber, P.A. is not being reported as a salary, but rather is appearing on his tax return as business income. As your accountant, I determined that this is the proper accounting method in this particular instance. The corporation has followed this accounting method consistently since inception.

Mr. Schreiber is being paid a commission from the corporation based upon the volume of business he refers to it. The corporation in turn is paid from other legal firms based upon the volume of business it refers to them. Since the payments to Mr. Schreiber are more in the nature of commission rather than salary, at the time of incorporation I felt that the reporting of salaries in this case would be totally inappropriate.

Very truly yours,

Eugene Rosenberg
JL/SB

Senator EAGLETON. That letter says, "Mr. Schreiber is being paid a commission based upon the volume of business he refers to it," meaning the firm.

Isn't there a significant difference taxwise between a commission and a salary?

Mr. SCHREIBER. I don't know. I'm not an accountant. I honestly cannot answer that question. I can only explain what the word "commission" means in that sense, or I can explain how a compensation is paid.

Senator EAGLETON. See, commission means that as Broad & Cassel prospers, you prosper.

Mr. SCHREIBER. No, sir.

Senator EAGLETON. Salary can be separate and distinct as you are trying to separate it, but taxwise, they are different. Because under one, you file quarterly withholdings, and under the other, you don't.

Does your accountant now tell you that the IRS has told you now no longer it is a commission, it is now a salary?

Mr. SCHREIBER. I can only say that whatever discussions my accountant had with the Internal Revenue Service has been resolved to our mutual satisfaction. I honestly don't know the results of it.

Senator EAGLETON. Did he tell you now you are going to pay quarterly withholding?

Mr. SCHREIBER. May I confer with my wife, because I don't know the answer to that question. She may.

Senator EAGLETON. Sure.

[Discussion held off the record.]

Mr. SCHREIBER. My wife informs me, and she is the liaison with Mr. Rosenberg, that from here on in, based on the resolution of this with the Internal Revenue, that I will be paid a salary from Barry D. Schreiber, P.A. and will be withholding and everything else; yes, sir.

Senator EAGLETON. But it used to be different?

Mr. SCHREIBER. Apparently it was; yes, sir.

Senator EAGLETON. Now, how is this what used to be a commission and now is called a salary, how is that determined?

Mr. SCHREIBER. Sitting down with Mr. Broad and looking over the fees that were paid to the firm which were directly generated through me to be considered my clients.

Senator EAGLETON. You sit down with him once a year?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. When do you sit down, December, toward the end of the year?

Mr. SCHREIBER. No; our fiscal year is May, so we sit down March, April.

Senator EAGLETON. March, April. And you determine how much you brought in——

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON [continuing]. For the previous year and how much you thereby enhanced the well-being of the firm by the business that you brought in?

Mr. SCHREIBER. Yes, sir—no, sir; how much business I brought in that could be attributed directly to me.

Senator EAGLETON. Business that you bring in enhances Broad & Cassel, needless to say.

Mr. SCHREIBER. Mr. Broad would have to comment on that.

Senator EAGLETON. Don't you think the business that you bring in enhances the well-being of Broad & Cassel?

Mr. SCHREIBER. The amount of dollar volume that Broad & Cassel, what I bring in, may be insignificant in light of their other gross revenues, so I couldn't say whether it enhances or doesn't enhance the firm.

Senator EAGLETON. Well, why do you think they want you around?

Mr. SCHREIBER. I think they like me and my lawyer's ability and bringing in business. I am not going to deny that my being with the firm isn't a good position for me for the firm.

But you are asking me a different question as to whether these dollars are significant or not. Certainly, the money is paid to the firm. The firm then pays me based upon what I have generated directly to the firm through my clients.

Senator EAGLETON. But the more business you bring in, the better it is for you and the better it is for Broad & Cassel; is that not an obvious fact?

Mr. SCHREIBER. Certainly, the more business that I bring in that are my clients is beneficial to me.

Senator EAGLETON. And beneficial to Broad & Cassel?

Mr. SCHREIBER. Yes.

Senator EAGLETON. OK. Is there a written agreement on this?

Mr. SCHREIBER. No, sir.

Senator EAGLETON. Is this a meeting that you have, just you and Mr. Broad, the two of you?

Mr. SCHREIBER. That is correct.

Senator EAGLETON. And is this, then, sealed with a handshake?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. So you and Mr. Broad seal it with a handshake, and you go over the business that you brought in.

Mr. SCHREIBER. That is correct.

Chairman ROTH. I notice there is a vote. I suggest we take a brief recess and go out and vote. It gives everybody a break. We will reconvene. The committee is in recess.

[Short recess.]

Chairman ROTH. The committee will please be in order.

Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman.

I will try to move along.

Would this be fair to say, Mr. Schreiber: You are of counsel with Broad & Cassel. Of course you want to do the best you can for yourself and your family. That is human, that is natural, and also, you want the firm with which you are associated to do well. Do you have any dispute with that comment?

Mr. SCHREIBER. In a conceptual form, I have no dispute with that comment, but as to whether the firm does well or doesn't do well, that does not affect me directly.

Senator EAGLETON. Of course, if the firm did so poorly it went out of business, you would have to go elsewhere.

Mr. SCHREIBER. Yes; and I would probably be able to find a similar situation with another prestigious firm in Miami.

Senator EAGLETON. In your efforts to bring new business to Broad & Cassel, and we have gone into the fact that you do bring new business and that is part of why they hired you, have you ever sought bond-related work for the firm from governmental entities in Florida, ever sought bond-related work in Coral Gables, Broward County, or Fort Lauderdale or school districts in the area or——

Mr. SCHREIBER. Yes. I have made a concerted effort in that field, in all jurisdictions—I shouldn't say all—but in any jurisdiction in the State of Florida, in any municipalities, in any other government jurisdiction except for Dade County.

Senator EAGLETON. So you made a concerted effort to get bond-related business from any governmental entity except entities in Dade County.

Mr. SCHREIBER. No; not entities in Dade County, because the cities in Dade County pose no problem whatsoever.

Senator EAGLETON. So in Dade County, like Miami is in Dade County, isn't it?

Mr. SCHREIBER. That's fine, yes, but the City of Miami is separate from the County of Dade.

Senator EAGLETON. Yes. So you are anxious to get bond-related business from all these governmental entities, but you make the exception of the Dade County Commission?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. Have you been successful in bringing in some bond-related business from these governmental entities?

Mr. SCHREIBER. I believe I have; yes, sir.

Senator EAGLETON. Because this hearing will adjourn at 1 o'clock, could you, for the next session——

Chairman ROTH. No. I want to say that the Chair has not made any ruling on what is going to happen. I do understand that it would be very desirable from Mr. Schreiber's point of view to be able to leave no later than 1:30 because of the Jewish Sabbath. But depending on what his decision is, I would otherwise want to continue.

Mr. SCHREIBER. Do you wish me to respond, Mr. Chairman, to that situation?

Chairman ROTH. Yes.

Mr. SCHREIBER. For religious reasons, I observe the Jewish Sabbath, which begins sundown. In order for me to return to Miami, I would have have to catch a 1:55 flight. To do that, I would have to leave no later than 1:30 from this building.

On the other hand, I would prefer to have this meeting totally concluded, and I am prepared to stay beyond that. That would require me, possibly, staying in Washington for the weekend, which is acceptable.

But if this meeting can be concluded by 1:30, it would be appreciated.

Senator EAGLETON. I wish it could, but it can't.

So what I was going to ask you to do, if we were going to continue the hearing, was to give us a list of all bond-related clients that you had brought into Broad & Cassel for the calendar years 1983, 1984, and 1985.

Maybe we will take a convenience break sometime later today and perhaps someone could call your secretary and—I don't want you to have to try to do it off the top of your head, unless you want to—and they can prepare the list while we are going on to other matters.

Mr. SCHREIBER. My secretary would not be able to put that information together. Had this been asked for prior to this meeting, it would not have been difficult for me to put it together, but I cannot do it today.

Senator EAGLETON. All right. Have you brought in some school district bond-related matters in south Florida?

Mr. SCHREIBER. I believe that we did some work for the Dade County School Board. I believe we did some—we were special counsel to a $100 million bond issue to the Dade County School Board.

Senator EAGLETON. Did you get that business?

Mr. SCHREIBER. Well, there was a discussion between another member of my firm and myself as to who was responsible for it, and I think I waived my rights to it and said, "OK, it's yours." So I did not—it was not my client.

Senator EAGLETON. Tell us the ones that were your clients. Were there lots of them or few or what, several?

Mr. SCHREIBER. I believe we were bond counsel to the city of Homestead in Florida.

Senator EAGLETON. You brought that business in?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. And were paid accordingly at the end of the year pursuant to the handshake meeting?

Mr. SCHREIBER. I think I may be able to make this statement without records: That what I am presently being paid by Broad & Cassel, right now, in this period of time, I do not believe that I have been paid for any bond work brought in to date that would have to be looked at for the next fiscal period.

Senator EAGLETON. 1983? Were you paid for any bond work?

Mr. SCHREIBER. I doubt it very much.

Senator EAGLETON. 1984?

Mr. SCHREIBER. A possibility, but if it was, it certainly was not a lot.

Senator EAGLETON. OK. But you are aggressively interested in bringing bond work from governmental entities to the firm, excluding the Dade County Commission, no doubt about that?

Mr. SCHREIBER. Yes, sir. Yes, sir.

Senator EAGLETON. All right. If we need an itemization, we will, but I want to move on. The chairman wants me to move.

Do you have a copy there of the Ginsburg opinion, the one that was put in the record by Senator Roth?

Mr. SCHREIBER. No, I don't. I'm sorry. I don't have a copy.

Senator EAGLETON. We will send one out to you. Senator Roth very properly put this in the record.

It is coming out. Are you familiar with the opinion?

Mr. SCHREIBER. When I see the date and the subject matter, I will be able to respond.

[Witness perusing document.]

Mr. SCHREIBER. Conflict of interest, January 9, 1985, yes, this is Mr. Ginsburg's opinion to me.[1]

Senator EAGLETON. And the subject matter of the opinion was whether your relationship with Broad & Cassel of counsel——

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON [continuing]. Would prohibit Broad & Cassel from getting bond business from the Dade County Commission; isn't that the basis of the subject matter?

Mr. SCHREIBER. I guess that was the thrust of the opinion, yes.

Senator EAGLETON. The thrust, OK. The opinion is dated January 9?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. When did you go to Mr. Ginsburg or one of his assistants to request this opinion?

Mr. SCHREIBER. Certainly prior to January 9; probabiy in 1984.

Senator EAGLETON. 1984. Mr. Murray Greenburg, do you know him?

Mr. SCHREIBER. Yes, sir. He is the first assistant county attorney.

Senator EAGLETON. He thought it was November or December. You would have no trouble with that?

Mr. SCHREIBER. That is about right.

Senator EAGLETON. So in November or December 1984, you go to Ginsburg. Prior to going to Ginsburg, did you have a meeting in your office or anywhere else with Mr. Broad about the subject matter of Broad & Cassel getting bond work before the Dade, County Commission?

Mr. SCHREIBER. It was probably in that general period of time, because we are now talking, having joined the firm in April or May 1983——

Senator EAGLETON. Yes.

Mr. SCHREIBER [continuing]. We then get into this late 1984, and I guess things are beginning to click in this area, and I was concerned. And when I say concerned, I really want the committee to understand that nothing that I did in the entire area that we are discussing today was done without getting an opinion from the county attorney. My intent was to make sure that I was violating absolutely no legal requirements whatsoever.

So give or take around that time, things began to develop, maybe representing underwriters or what-have-you that were involved with Dade County issues or something. And I said, "Bob, you know, as this begins to develop and what-not," and Mr. Broad probably said that, "We are going to be going after the Dade County bond business." I said, you know, "What would be involved? Please give me an opinion so I know how to conduct myself from that point on."

Senator EAGLETON. When did Mr. Broad tell you he was going to go after Dade County business?

Mr. SCHREIBER. It is quite likely that Mr. Broad mentioned that to my prior to my ever joining the firm and making it very clear to me that this is the intent, "To make sure that your position on the board would not foreclose us from doing that," and that could have

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[1] See p. 40.

been the earliest time that he did it. He made it very clear to me at that point in time that our relationship with the firm, "We want you not to be involved in any transaction in any efforts whatsoever with Dade County."

Senator EAGLETON. So even prior to April 1983—that is when you went with Broad & Cassel—when you were discussing going with Broad & Cassel, Mr. Broad mentioned to you that Broad & Cassel was going to go after some Dade County bond business.

Mr. SCHREIBER. Well, at the time they had other business before the county, and before I could solidify any kind of relationship with Broad & Cassel, I had to ask Mr. Ginsburg, county attorney, "How would this affect the firm's being able to conduct business before the county?"

Senator EAGLETON. What other business did Broad & Cassel have before the county?

Mr. SCHREIBER. At the time I was joining them—were talking about joining them, they had governmental matters, administrative matters, zoning matters before the board.

Senator EAGLETON. A wide array of matters before the county?

Mr. SCHREIBER. Yes, yes, sir.

Senator EAGLETON. And you knew of their wide array of matters before the county. Had you been on the commission when Broad & Cassel matters came before the commission?

Mr. SCHREIBER. Up to that point in time?

Senator EAGLETON. Yes.

Mr. SCHREIBER. Yes, sure.

Senator EAGLETON. Zoning appeals, for instance?

Mr. SCHREIBER. Sure.

Senator EAGLETON. So in your discussions with Mr. Broad, before April 1983, you knew that Broad & Cassel were going to go after Dade County bond business?

Mr. SCHREIBER. I didn't know when they were going to go after bond business, but he made it clear at that point in time that in the future, this was what they intended to do, and went after it.

Senator EAGLETON. In April 1983, were they doing a lot of bond business around the southern Florida area?

Mr. SCHREIBER. Yes, I think they were listed at the time in the red book, which allows one to issue opinion on tax free bonds, and were doing business.

Senator EAGLETON. Why, if Broad raised this subject matter with you prior to April 1983, why did you wait until November or December 1984, 1½ years later, to get an opinion on the legality of your serving on the council and at the same time being of counsel to Broad & Cassel?

Mr. SCHREIBER. The only way to really answer that question is that at the time that I was discussing joining the firm, we knew that there were zoning matters and others matters that the firm was handling before the county, and as such, I asked Mr. Ginsburg what that relationship would be, how it would affect my position on the board, et cetera, et cetera, and that was really not my area.

I was doing no bond business of any nature; I was not in that area of the law at that point, so we just didn't bring that up.

It was only later when I began to get into that field that I asked Mr. Ginsburg for an opinion relative to that area.

Senator EAGLETON. But Broad & Cassel, you knew, was in that field?

Mr. SCHREIBER. Yes.

Senator EAGLETON. And you knew that they were aggressively trying to get business in southern Florida, the bond business?

[Witness nodded affirmatively.]

Senator EAGLETON. If you knew that when you joined the firm in April 1983, why did you wait a year and a half to seek an opinion on the legitimacy of your arrangement with Broad & Cassel? Why didn't you go immediately to Mr. Ginsburg and say, "I'm joining this firm. They are aggressively pursuing bond business, including Dade County bond business. I need an opinion very promptly, as I'm joining this firm"?

Mr. SCHREIBER. At that time, the only business that they had before the county was totally unrelated to any kind of bond business whatsoever, and that was the question that had to be answered at the time.

Bond business was really not discussed in any meaningful way with the firm, and I indicated that was a concern that they had at the time.

Senator EAGLETON. That doesn't square, Mr. Schreiber, to your answers to earlier questions. I won't bother having the reporter read back the prior questions and answers, but prior to going to Broad & Cassel in 1983, you knew they were aggressively pursuing bond business in southern Florida, and indeed, you knew they were already in the bond business in 1983.

Dade County is a very important governmental jurisdiction in southern Florida, is it not?

Mr. SCHREIBER. I really can't answer as to why there is a difference in the context of the county attorney's opinion. Nevertheless, there is a county attorney's opinion in, I believe, 1983. I don't see that here, but there is one as to the relationship I was having with Broad & Cassel at that point in time, and when the bond business later on became something that the firm was getting into in a much stronger way, we have an opinion of January 9, 1985.

Senator EAGLETON. How does Dade County pick its bond counsel? What do they practice as procedures?

Mr. SCHREIBER. Historically, years ago, the—there was one law firm, a national firm out of New York that did all the bond counsel work for Dade County. I think it was sometime in 1980 when some of the larger, prestigious red book law firms in Miami decided to make a push to try to get the work for themselves and out of the hands of the one New York law firm.

Indeed, we had such firms pushing as Greenberg, Traurig, Askew; Sparber, Shevin—former attorney general of the State of Florida—Marty Fine, a political activist, Ken Myers, a former State senator, all making a push for the bond work.

So the commission decided at that point that local firms should be getting the business; set up certain criteria or what have you, appointed, I guess, the politically connected, if you will, firms, although all of them were certainly qualified in the red book, and all were associated in one way or another with a national firm.

Senator EAGLETON. You said they, the county, set up certain criteria.

Mr. SCHREIBER. I assume they did, yes.

Senator EAGLETON. Well, you said they did.

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. Was amongst those criteria that there would be five firms selected to be available for Dade County bond work and the business would rotate amongst those five as various bond issues came up?

Mr. SCHREIBER. If I recall that, after the commission made its decision to open up the bond work, we had 27 firms that were acceptable, and the county attorney said that was going to be too difficult to handle. The county attorney said 27, or whatever the large number was, was unacceptable, we couldn't work with that, and asked the commission to narrow it down to X. It may have been his suggestion for five. It may have been someone else's suggestion to suggest five, I don't remember, and the suggestion was five.

Senator EAGLETON. Five. So then moving into 1981, up to the present date, the practice is to have a list of five eligible firms?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. And if you are not on the list of five, you don't get any business?

Mr. SCHREIBER. You are not going to be appointed as bond counsel for Dade County; yes, sir.

Senator EAGLETON. What are the other criteria that Mr. Ginsburg or the county counselor said?

Mr. SCHREIBER. I'm sure that there is some sort of policy, but I could not reiterate it now. They would have to be in the red book. They would have to be associated with some national firm, something like that.

Senator EAGLETON. I offer for the record, Mr. Chairman, a memorandum to the mayor and members of the board of county commissioners dated October 6, 1981 from Mr. W.H. Erickson, the director of finance, and Mr. Robert A. Ginsburg, Dade County attorney, entitled, "Guidelines for the Selection of Bond Counsel." It is two pages, and also attached to it is a two-page document called, on the letterhead of the county attorney, Metropolitan Dade County, FL, a letter from Murray Greenburg, first assistant county attorney, to one Melvin Greenburg, and it deals with county bond counsel conflict of interest, says the subject.

Chairman ROTH. Without objection.

[The documents referred to follow:]

MEMORANDUM

Agenda Item No. 7(b)(1)

TO: Honorable Mayor and Members, Board of County Commissioners

DATE: October 6, 1981

SUBJECT: Guidelines for the selection of Bond Counsel

FROM: W.H. Erickson, Director
Finance Department

Robert A. Ginsburg
Dade County Attorney

The following operating guidelines for the selection of Bond Counsel are submitted for your approval:

1. Qualifications:

(a) Listing in the Bond Buyers Directory of Municipal Bond Dealers of the United States, commonly referred to as the "Red Book", or associated for the specific issue with a firm listed in the "Red Book" and

(b) Assurance that a senior partner with expertise in bond financing will be responsible for the legal work and accessible to the County to answer inquiries and discuss the progress of the issue from time to time, and

(c) Evidence of depth of legal talent with capacity to handle bond work.

(d) Depending upon the specific issue involved, the Bond Counsel Selection Committee may look to the expertise of the firm in the field of federal income tax or other specialized areas.

(e) Additionally, a firm of national reputation may be important in a specific issue.

The acceptability of Bond Counsel's opinion by investment bankers, brokerage houses and investors rests upon the established reputation of the lawyer or firm of lawyers as it relates to competence, diligence and integrity. All of the foregoing qualifications are presented with this principle in mind.

2. Distribution and Rotation:

The Bond Counsel Selection Committee should take into account the number of issues which a particular firm has handled for the County and the size and nature of each issue. The Committee should endeavor to have an equitable distribution and rotation of the County's bond work among the approved firms, while at the same time recognizing that certain issues, (e.g., parity bonds

and refunding bonds), are best handled by utilizing certain firms' expertise with a particular predecessor or parity bond issue. This will insure expedition and continuity of opinion from one series of issuance to the next.

3. Conflict of Interest:

(a) No firm shall represent the County on a bond issue in which it participates as an attorney for any other party to the issue.

(b) A firm shall be disqualified from doing the County's bond work if a member of that firm is on the board or agency which either issues or has a significant role in the issuance of the bonds.

(c) Any firm representing Dade County, its Agencies, Board or Authorities shall not, for a period of two (2) years after such representation has ceased, act as agent or attorney in any transaction involving bonds or debt instruments which bear the name of Dade County, its Agencies, Boards or Authorities.

W.H. Erickson

Robert A. Ginsburg

RAG:bE:rt

COUNTY ATTORNEY
METROPOLITAN DADE COUNTY, FLORIDA

DADE COUNTY COURTHOUSE
SIXTEENTH FLOOR
MIAMI, FL 33130
(305) 579-5151

February 25, 1982

Melvin N. Greenberg, Esq.
Greenberg,Traurig,Askew,Hoffman,
Lipoff,Quentel & Wolff, P.A.
1401 Brickell Avenue
Miami, Florida 33131

Re: County bond counsel--conflict of interest

Dear Mel:

You have requested a clarification of the County's guidelines pertaining to conflicts of interest as they relate to the County's bond counsel. These guidelines are articulated in two reports this office made to the County Commission in the fall of 1981. On September 1, 1981, the Commission was advised that the bond counsel selection committee would promulgate guidelines which would, inter alia, establish "standards to eliminate the potential for conflicts of interest." The implementation of the foregoing guidelines was submitted to the County Commission on October 6, 1981, and contained the following provisions relating to conflicts of interest:

"(a) No firm shall represent the County on a bond issue in which it participates as an attorney for any other party to the issue.

(b) A firm shall be disqualified from doing the County's bond work if a member of that firm is on the board or agency which either issues or has a significant role in the issuance of the bonds.

(c) Any firm representing Dade County, its Agencies, Board or Authorities shall not, for a period of two (2) years after such representation has ceased, act as agent or attorney in any transaction involving bonds or debt instruments which bear the name of Dade County, its Agencies, Boards or Authorities."

Your question relates specifically to guideline (c).

In adopting guideline (c) the County was endeavoring to make certain that the advice it or its agencies received from its own bond counsel was the best legal guidance available. Specifically, the County wanted to make certain that the judgment of bond counsel was not affected by benefits which may accrue to present or future private clients as a result of a determination made while serving as the County's bond counsel. By way of illustration, the County was concerned that a law firm, while serving as counsel for the Industrial Development Authority, would rule that a given project qualified for industrial development revenue bond financing at least partly because the firm could then serve as attorney for an applicant for industrial development revenue bond financing and use the previous project as precedent.

It was not the intention of the County to seek a blanket prohibition which would eliminate the possibility of the various bond counsel from acting as attorneys for any party to any County issue for a period of two years after its County representation had ceased. In an effort to address the real conflict which the County seeks to eliminate, this office is of the opinion that the prohibition set forth in guideline (c) above should be read as follows:

> Any firm representing Dade County, its agencies, boards or authorities should not, for a period of two years after such representation has ceased, act as agent or attorney in any transaction involving bonds or debt instruments which bear the name of the agency, board or authority which it represented as bond counsel.

It goes without saying that the foregoing County guidelines do not supplant the ethical guidelines established by the Florida Bar Association. Rather, the County guidelines are additional restrictions imposed by Dade County to avoid actual and potential conflicts of interest which it feels would be detrimental to the citizens of Dade County.

Cordially,

Murray A. Greenberg
First Assistant County Attorney

MAG/rk

Senator EAGLETON. Mr. Schreiber, I point your specific attention to page 2 of the first document, subitem 3 called "conflict of interest," and its says, sub b, "A firm shall be disqualified from doing the county's bond work if a member of that firm is on the board or agency which either issues or has a significant role in the issuance of the bond."

The first question: Were you aware of that guideline?

Mr. SCHREIBER. I'm really not sure, because—I mean, if this was the guideline, then I should have been aware of it, and I accept it as such.

Senator EAGLETON. You don't question the authenticity of this document?

Mr. SCHREIBER. No, it has got Mr. Ginsburg's signature on it. I mean, this is an official county—I certainly don't take issue with it. That's what it says.

Senator EAGLETON. It says, "A firm——

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON [continuing]. That's a law firm—"shall be disqualified from doing the county's bond work if a member of that firm is on the board or agency which either issues or has a significant role in the issuance of the bond."

Mr. Schreiber, that fits you to a T.

Mr. SCHREIBER. Yes, it certainly does.

Senator EAGLETON. And it fits Broad & Cassel to a T.

Mr. SCHREIBER. Yes, it does.

Senator EAGLETON. So under the county guidelines of your own county and Mr. Ginsburg, the fellow that wrote you the earlier memo, this January 9, 1985 memo, Mr. Ginsburg's own guidelines disqualify Broad & Cassel.

Mr. SCHREIBER. If this is the county policy and this is Mr. Ginsburg's subsequent conflict-of-interest opinion, he has made a mistake in giving that to me. But I am——

Senator EAGLETON. The opinion he gave you conflicts with the guidelines.

Mr. SCHREIBER. Yes.

Senator EAGLETON. To your knowledge, have those guidelines ever been repealed, modified or amended?

Mr. SCHREIBER. I believe, now, the commission changed in a structure-type situation, I don't recall precisely when, but we operated under a committee-type system, and at some point in time, guidelines were set by the commission, and I would certainly hope that the guidelines that were subsequently set don't do the same thing. Because if this is the commission's policy, then I have been operating under a direction from Mr. Ginsburg that is, indeed, a conflict with policy.

Senator EAGLETON. I think your hope is misplaced, Mr. Schreiber. I think you and your firm are in violation of those guidelines. Let me point out the second letter, February 25, 1982. That is about 4 months later, paragraph sub B. This is the first assistant, Mr. Murray Greenburg:

> A firm shall be disqualified from doing the county's bond work if a member of that firm is on the board or agency which either issues or has a significant role in the issuance of the bonds.

I think it is verbatim language as read earlier. Nothing has been changed. These are the guidelines still in existence with the Dade County government.

Mr. SCHREIBER. No. Mr. Chairman, with all due respect, it cannot be that those guidelines that you have—have indicated are those still in place. I cannot believe that Mr. Ginsburg would have issued the opinion of January 9, if, indeed, those policies were in place. I mean—and I acted on Mr. Ginsburg's memo of January 9, and I cannot believe that—I believe there has got to be another guideline for the selection of bond counsel at a date subsequent to 1981.

Senator EAGLETON. Can you find it?

Mr. SCHREIBER. I will certainly try to get it for you. Yes, sir.

Senator EAGLETON. Can you find it now?

Mr. SCHREIBER. I don't have it with me. But I am positive that there has got to be something, because my own attorney would not have done that to me.

Chairman ROTH. I would like to ask one or two questions, too.

As I read the February 25 letter, and I haven't had a chance to read it carefully, or the one of January 9, but it appears to me that section B to which Senator Eagleton has made reference says, "A firm shall be disqualified from doing the county bond work if a member of that firm—"

I guess my first question is, do you know how Mr. Ginsburg construes the words "member of the firm"? Does that mean a partner, an associate, someone who is of counsel, or is there a distinction between those categories?

Mr. SCHREIBER. Well, there is certainly a distinction in those categories. A member of a law firm—in usual parlance, someone begins as an associate, if you will; then becomes a member of the firm; and has a, if it's a partnership, shares in the profits and losses of the firm.

So certainly, this particular paragraph that you are referring to says, "If a member of that firm is on the board or agency—" et cetera, et cetera, and I was then not, nor ever was, or probably never will be a member of the firm.

Maybe that's the basis upon which Mr. Ginsburg then gave his conflict-of-interest opinion on January 9. But I am about 99 percent positive that that is not the current guideline, but I do not have a copy with me. Had I been asked for one prior to this meeting, I certainly would have given it to the committee.

Chairman ROTH. But in any event, normally, the language of a member of a firm with reference to a law firm is somewhat a term of art. It normally means a partner, is that not correct?

Mr. SCHREIBER. Yes, sir, a member of a law firm is a partner.

Chairman ROTH. So while this memorandum is not clear, it certainly can be construed to provide that it only applies if the individual was a partner. This was, after all, drafted by an attorney.

Mr. SCHREIBER. That is absolutely correct.

Chairman ROTH. There is a subsequent memorandum dated January 9, 1985. Are you familiar with that?

Mr. SCHREIBER. I believe that is the one I was handed earlier.

Chairman ROTH. Yes. Doesn't that memorandum make it clear that you are not a partner or associate of the firm?

Mr. SCHREIBER. Yes. I sat down with Mr. Ginsburg. I explained to him my relationship with the firm. I defined "of counsel."

Chairman ROTH. So technically, it would appear that the restriction does not apply if a person is not a member of a law firm?

Mr. SCHREIBER. That is apparently the basis upon which Mr. Ginsburg opined his memorandum of January 9, 1985.

And again, Mr. Chairman and Mr. Eagleton, with your permission, I just simply want to reiterate, whatever action I have done was done with the direction of the county attorney. Had this conflict-of-interest opinion of January 9, 1985 been written differently, I would have conducted myself differently. But I was acting according to the direction that Mr. Ginsburg allowed me to act.

Chairman ROTH. I might also point out that, if there was any error, as I read the language, it would be the firm in violation of the regulation and not you, because in speaking of conflict of interest, it says, "A firm shall be disqualified from doing the county bond business if a member of that firm—." The application, as I read it—and I have not had the opportunity to study it carefully—applies to the firm, so that if even if one did not agree with the interpretation, that certainly is a valid construction that you were not a member of the firm. Then, if there was any wrongdoing, it was on the part of the firm, of which you are not a member.

Mr. SCHREIBER. That is correct. And the onus on this is on the firm not being able to do the work if a member of that firm is on the board.

Chairman ROTH. That is right.

Mr. SCHREIBER. With recent events, somebody either erred or overlooked this, or indeed, that is not the policy, or the word "member" has been defined as Senator Roth has indicated.

That is the only light I can shed on the issue.

Chairman ROTH. Let me ask you this further question: If there were error, why was the bill passed by a 5 to 1 vote by the council?

Mr. SCHREIBER. I'm sorry, what bill?

Chairman ROTH. Am I correct in understanding that there was a vote 5 to 1 on the part of the council to retain the law firm in question?

Mr. SCHREIBER. Recently? We are talking about events over the last——

Chairman ROTH. November 21?

Mr. SCHREIBER. Of this year?

Chairman ROTH. Yes.

Mr. SCHREIBER. Yes. The commission did vote—I was not present—5 to 1 to engage the services or to appoint them to serve Broad & Cassel, as one of the five bond counsels.

Chairman ROTH. Last November there was a vote.

Mr. SCHREIBER. November 1985, not November of last year.

Chairman ROTH. I mean this year, not last year. November 1985, there was a 5 to 1 vote to retain the firm. You did not take part in the vote?

Mr. SCHREIBER. Absolutely not.

Chairman ROTH. Do you know, was there counsel available when they took that vote?

Mr. SCHREIBER. Was counsel available?

Chairman ROTH. The county lawyer?

Mr. SCHREIBER. Oh, yes, Mr. Ginsburg was there.

Chairman ROTH. So apparently, there was no feeling that there was any conflict here in violation of the code of ethics?

Mr. SCHREIBER. I would assume, if Mr. Ginsburg felt that the firm was not qualified under the county's guidelines as evidenced in the 1981 memorandum or any subsequent guidelines, he would have counseled the commission, the firm at that time, that the firm was disqualified.

He did not do that. I was not present. I did not watch the tape, have not seen it, heard it. I only know the end result.

Chairman ROTH. Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman. Let me pay tribute to the chairman. He is a very able attorney, and he is trying to rehabilitate a damaged witness, and that is permissible. Of course, Mr. Chairman——

Chairman ROTH. Let me——

Senator EAGLETON. Of course, Mr. Chairman——

Chairman ROTH. Let me say at this point——

Senator EAGLETON [continuing]. There can be other members of the firm other than partners. For instance, your favorite firm for today is Dewey, Ballantine. They have the resident partners listed on the stationery, Mr. Chairman. Dewey, Ballantine has 400 attorneys.

Chairman ROTH. First of all, let me just say that I don't think any witness has been damaged or needs rehabilitation.

Senator EAGLETON. Well, this one does.

Chairman ROTH. I just want to make that point very well.

Senator EAGLETON. This witness does.

Chairman ROTH. That may be the conclusion of the senior Senator from Missouri.

Senator EAGLETON. And it is the conclusion of the Florida Bar Association, which I will get into next.

Chairman ROTH. But the fact remains, this gentleman is entitled to a full and fair hearing, and we intend to see that is given.

Senator EAGLETON. Dewey, Ballantine has close to 400 lawyers, only a limited number of which are partners. They have all kinds of lawyers there. They have of counsel, associates, junior associates, et cetera.

You cannot read this guideline to say it only applies to the 17, I think it is, partners on the Dewey, Ballantine letterhead in a shop of 400 and that the other 383 are free to do bond business with Dade County; that it is only limited to the 17 partners. Poppycock, Mr. Chairman. Nice try. Nice try. But it won't fly.

Chairman ROTH. I just want to point out that what you construe another law firm to have has little relevance.

Senator EAGLETON. You made that very relevant. I just used that as an example.

Chairman ROTH. I just point out that on the basis of the interpretation of Robert Ginsburg, the Dade County attorney, who ruled on January 9, 1985, that there is no conflict. I think that reading has to be given full credit. You may disagree with it, but nevertheless, this is the county attorney that has responsibility for making these kinds of interpretations.

Senator EAGLETON. And the guidelines are the guidelines, as we have already put into the record.

Now, Mr. Schreiber, do you know Patricia Allen, ethics counsel to the Florida Bar?

Mr. SCHREIBER. No, sir.

Senator EAGLETON. Have you ever heard of her name?

Mr. SCHREIBER. No, sir.

Senator EAGLETON. Under the Florida Bar Ethics Rules, if a person is of counsel to a firm, that person is treated, for ethics purposes, as a partner of the firm. Did you know that?

Mr. SCHREIBER. I am not aware of that. Apparently, Mr. Bob Ginsburg was unaware of that. Nor do I——

Senator EAGLETON. Mr. Ginsburg's opinion did not rule under the ethics or cannon of ethics of the Florida Bar. Is it ever mentioned in the opinion?

Mr. SCHREIBER. Apparently not.

Senator EAGLETON. No, it isn't.

If an of counsel is treated under the Florida Ethics Code as a partner of the firm, where does that leave him?

Mr. SCHREIBER. If I may respond, the Florida Bar is entitled to its opinion, and I will admit here today that based on Mr. Ginsburg——

Senator EAGLETON. They would have something to do with your license, wouldn't they?

Mr. SCHREIBER. Pardon me?

Senator EAGLETON. They would have something to do with your license, wouldn't they?

Mr. SCHREIBER. The Florida Bar is certainly entitled to its position on a question; I guess, whoever asks the question.

I went to Mr. Ginsburg, and Mrs. Ginsburg apprised me of his opinion, and as such, I conducted myself, I reiterate, I conducted myself based on Mr. Ginsburg's opinion. If there was an oversight on my part that I forgot to include the thought of another element involved, I guess that's an error of omission. But I feel constrained to respond to the Florida Bar's opinion, and I believe, certainly, the material that I have furnished this committee indicates a prior relationship with the Florida Bar that also issued its opinion on me, and they were later determined to be wrong.

I would draw this committee's attention to the Florida Bar complaint against Barry Schreiber in a complaint filed by the Florida Bar against me back in 1979–80, because the Florida Bar determined that ethically, I had done something wrong, just like you have read, Mr. Senator, now.

Chairman ROTH. Would you yield just for a moment?

Mr. SCHREIBER. Yes.

Chairman ROTH. Could we have a copy? Is there a copy of this opinion?

Senator EAGLETON. From Patricia Allen?

Chairman ROTH. Yes.

Senator EAGLETON. This is like Mr. Schreiber's opinion. We got this over the phone. It has the same credibility and weight as his two verbal opinions that he relied on earlier. I would request that Patricia Allen be either invited to attend as a witness so that she can testify——

Chairman ROTH. We are not going to stretch this out for a series of hearings. I want to go on record right now.

But I would just point out that, as I said earlier, we can continue to debate and secure any number of opinions. Frankly, when Ms. Allen was commenting on the Florida Bar as it construed a code of ethics, I don't know whether that was only with reference to how you applied the code of ethics to the law profession. It may have had nothing to do with the question of code of ethics as it applies to a commissioner.

So that——

Senator EAGLETON. We are talking law profession. That is all they had jurisdiction over: lawyers. He is a lawyer.

Chairman ROTH. I am well aware——

Senator EAGLETON. He is now going to tell us his other involvements before the Florida Bar.

Chairman ROTH. I will complete my statement, and you will refrain, please.

In any event, another opinion is not going to, I think, bring an end to this, but we can get as many opinions as you want. I go back to what I said earlier. It is a matter for a decision by the courts. And the gentleman before us has agreed that he will comply with those judicial decisions.

In any event, I just want to make a comment that we have not, at least I have not had the opportunity to review this opinion. I don't think that it is that relevant.

Please proceed.

Mr. SCHREIBER. Thank you. Just to kind of put in perspective the opinions from the Florida Bar, which they are certainly entitled to give, but it is not the final decision in any case, and I'm really not commenting as much on this particular opinion as it relates to the others, because it's the first time it has been brought to my attention. Mr. Ginsburg didn't bring it to my attention. He is my lawyer in that sense, and if there was an area that may have—should have been looked at it, I did not.

But the Florida Bar, in the past, on a matter against me personally, on direct mail advertising, filed a grievance against me based on their opinion that it was ethically not permissible.

Chairman ROTH. Let me just make one observation. What concerns me with the proceedings is that we are not here sitting as the Florida Supreme Court, trying to decide whether or not the county attorney has made a correct or incorrect interpretation.

The fact that a member of the board of commissioners relied upon it in good faith seems appropriate. The question really before this panel is whether or not the individual is qualified to serve on the Board of Governors.

I really feel very strongly that it is very discouraging for anyone to enter public service if they rely in good faith on statements, on opinions and then find those opinions being attacked.

It could be that the county attorney is wrong. But I don't think the fact that he is wrong should be a basis of rejecting a potential nominee, not for that reason. I would hope we could get on with the question of the qualifications.

Mr. SCHREIBER. And Mr. Chairman, I thank you for those comments. But additionally, I would state for the record that if at any

time, in the past, certainly in the future, that Mr. Ginsburg, whoever the county attorney may be, changes his point of view, by virtue of any court cases from other jurisdictions than the State of Florida and would counsel me otherwise than he had counseled me today, I will fully, expeditiously follow through and act accordingly.

Chairman ROTH. I thank you for that statement.

Senator EAGLETON. We don't have to belabor it, but you did mention, Mr. Schreiber, that you did have one complaint filed against you by the Florida Bar, and you were exonerated on that by the Supreme Court. That was an advertising type of complaint, wasn't it?

Mr. SCHREIBER. Yes, sir; yes, sir.

Senator EAGLETON. Just to make the report complete, a second complaint was filed against you by the Florida Bar and the Bar exonerated you.

Mr. SCHREIBER. Can you refresh my memory?

Senator EAGLETON. Something about a 3-day cruise or something?

Mr. SCHREIBER. No, sir. No, sir. No, sir. That had nothing to do with the Florida Bar, sir.

Senator EAGLETON. By the Ethics Commission of the Florida Bar?

Mr. SCHREIBER. No, sir.

Senator EAGLETON. The Fight Back Foundation alleged Commissioner Schreiber violated the code of ethics by accepting a 3-day cruise. That was before the Ethics Commission.

Mr. SCHREIBER. Yes, sir. It had nothing to do with the Florida Bar, and with your permission, I could put that in proper perspective.[1]

[The county attorney's opinion, dated December 18, 1985, follows:]

[1] In a letter to the committee dated January 6, 1986, Mr. Schreiber states: "There has never been a second complaint filed by the Florida Bar. Reference here is being made to the "3 Day Cruise." I have previously submitted the County Attorney's opinion on this matter. It pertained to all Dade County Commissioners. This matter was never before or reviewed by the Ethics Commission."

MEMORANDUM

103.01-14

TO: Hon. Barry D. Schreiber
County Commissioner

DATE: December 18, 1985

SUBJECT: Promotional trips

FROM: Robert A. Ginsburg
County Attorney

You have asked that I reiterate the relationship between Dade County's Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1, Dade County Code, and the acceptance by County Commissioners of invitations to participate in promotional trips. You specifically direct my attention to your participation in the inaugural cruise of the S.S. Norway--the largest passenger ship to use the Miami Seaport as a home port. My analysis of such inaugural and promotional trips is contained in the attached County Attorney's Opinion No. 78-47 dated August 8, 1978.

Essentially, there are two legal reasons why acceptance of such inaugural and promotional invitations is not a violation of the County's Conflict of Interest Ordinance. First, the only language in our Conflict of Interest Ordinance which would be applicable to such invitations has been repeatedly declared unconstitutional by the Florida Supreme Court. Second, assuming the continued vitality of the ordinance, it would not prohibit acceptance of such invitations. The ordinance prohibits gifts which are "intended to influence [a commissioner] in the performance of his official duties or...intended as a reward for any official action...." The invitations to participate in inaugural celebrations do not fall within the prohibitions of the ordinance. The purpose of the inaugural cruise on the Norway, for example, was to call attention to the ship and to its tourist potential worldwide. In addition to county commissioners many other distinguished guests were invited with an emphasis on those with high visibility in the community for the maximum possible exposure in the media both locally and around the world.

The promotion of tourism in Dade County is a public purpose and the inaugural celebration is part of a tourist promotional campaign. These facts make it clear that even if the ordinance were effective, it would not have prohibited your acceptance of an invitation to participate in the inaugural cruise of the Norway.

Robert A. Ginsburg
Dade County Attorney

RAG/rk
Attachment

MEMORANDUM

COUNTY ATTORNEY'S OPINION NO. 78-47

Hon. Stephen P. Clark
Mayor
Metropolitan Dade County

DATE August 8, 1978

SUBJECT Conflict of Interest

Robert A. Ginsburg
First Assistant County Attorney

You have requested an opinion as to whether you may accept an invitation from Eastern Airlines to participate in the inaugural trip between Miami and Port-au-Prince, Haiti. We answer your inquiry in the affirmative.

Specifically, Section 112.313(2) provides:

> SOLICITATION OR ACCEPTANCE OF GIFTS.- No public officer or employee of an agency or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service:
>
> (a) That would cause a reasonably prudent person to be influenced in the discharge of official duties.
>
> (b) That is based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby.

This section has been declared unconstitutional in the cases of State v. Llopis, 257 So.2d 17 (Fla. 1971) and D'Alemberte v. Anderson, 349 So.2d 164 (Fla. 1977). The statute no longer has any operative effect, but, if it did, this office cannot envision how the trip might influence you in the discharge of your official duties.

Furthermore, Section 2-11.1(e) of the Dade County Conflict of Interest and Code of Ethics Ordinance states in pertinent part that:

> No person included in the terms defined in subsections B (1) through (6) shall, directly or indirectly, solicit, accept or receive any gift having a value of twenty-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part...

In our opinion, this ordinance is invalid for the same reasons cited by the Florida Supreme Court in its opinions declaring the comparable state statute invalid. If still effective, however, it is our view that this ordinance would not prevent you from accepting the invitation because there is no basis for inferring that it is intended to influence you in the performance of your official duties in any way or intended to reward you for any past official action taken in your official position.

Finally, Section 2-11.1(g) of the Code provides that:

> No person included in the terms defined in subsections B (1) through (6) shall use or attempt to use his official position to secure special privileges or exemptions for himself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

In our opinion the acceptance of the invitation is not prohibited by the foregoing section. The manner in which the invitation is framed and the inferred public purpose of promoting tourism between the two cities, negates the conclusion that your official position was utilized to secure special privilege or exemptions.

Robert A. Ginsburg
First Assistant County Attorney

RAG/dlg

Senator EAGLETON. All right.

Now, let me bring to your attention a written opinion of the Florida Bar that we have with us, and a copy will be sent and we will give a copy to the chairman.

Mr. Chairman, we are sending out to Mr. Schreiber and have submitted to you an opinion of the Florida Bar No. 67-5 issued on March 6, 1967, that deals with what a legislator may do in terms of clients and whether he shares in fees. I will question Mr. Schreiber about it. I ask unanimous consent that the opinion be placed in the record.

Chairman ROTH. Without objection.

[The document referred to follows:]

OPINION 67-5

March 6, 1967

A member of The Florida Bar who is a partner or associate of a member of the Legislature may not accept a retainer to perform lobbying services before the Legislature.

Canons: 6, 26

Opinions: 59-31, ABA 296, 306; Michigan 83

Chairman MacDonald stated the opinion of the committee:

The Board of Governors of The Florida Bar has inquired whether a member of The Florida Bar who is a partner of a member of the legislature may accept a retainer to perform lobbying services before the legislature. We are further requested to advise whether a fee sharing arrangement between the legislator and his partner whereby the legislator would not participate in fees received for lobbying services, or an arrangement whereby the legislator would refrain from voting on matters of interest to the client paying such fees would affect our answer to the basic inquiry.

We conceive lobbying generally to be the making of representations to the members of a legislative body for the purpose of influencing consideration by such legislators of pending or proposed legislation, compare *United States v. Rumely*, 345 U.S. 41, 97 L.Ed. 770, 73 S.Ct. 543 (1953). We treat lobbying as an entirely legitimate activity in the democratic process, and do not intend by this opinion to lend weight to any of the unfavorable connotations sometimes sought to be engrafted upon this phrase. Indeed lobbying, so long as in compliance with applicable law, seems to be sanctioned by the law of Florida, see Section 11.05, Florida Statutes 1965. We also emphasize that we deal with the precise question presented and do not deal with other questions sometimes allied to it, including appearances of legislators or their partners as counsel before public agencies.

The question presented is not new. It has been considered by this and other committees rendering advisory opinions in the ethical field on previous occasions. Two present members of this Committee, however, question whether the inquiry is within our jurisdiction, inasmuch as in their view lobbying is not the practice of law. The majority disagrees, believing that although lobbying like many other activities may be legally performed by non-lawyers, a lawyer performing such activities may not evade the ethical requirements imposed upon him as a member of the Bar. Indeed Canon 26 expressly provides that professional advocacy before legislative bodies shall be "upon the same principles of ethics which justify . . . appearance before the Courts."

In Opinion 296 (August 1, 1959) the Committee on Professional Ethics of the American Bar Association held that a law firm could not accept employment to appear before legislative committees while a member of the firm was serving in the legislature, even upon full disclosure of such representation, and even though the lawyer-legislator did not share in any fee received by the firm. This Committee in its Opinion 59-31 (April 11, 1960) adhered completely to Opinion 296. The reasoning of these opinions was obviously grounded in the inherent conflict of interest in one member of a law partnership serving in the legislature, and the other arguing before the legislature with reference to the contents of proposed legislation, and further in the inability of the public to furnish any meaningful consent to such conflicting representation (see Canon 6). These opinions find support in the earlier Opinion 83 of the Michigan Committee (July, 1944).

Subsequent to our Opinion 59-31, the American Bar Association Committee gave further consideration to the same problem in Opinion 306 (May 26, 1962). It there concluded that, if there were constitutional or statutory provisions or legislative rules which expressly, or by necessary implication, recognized the propriety of a lawyer appearing as a lobbyist before the legislature when a member of his firm was a member of the legislature, or where provision had been made permitting a member of the legislature to disqualify himself from voting on or participating in the discussion of the matter involved, consent in effect had been given to such representation, thereby presumably meeting the consent requirements of Canon 6. The Committee then proceeded to construe a provision of the Constitution of the State of Texas, reaching the conclusion that such provision permitted a member of the legislature to disqualify himself, thus constituting the requisite public consent. However paradoxically the Committee also concluded that "such provisions were probably never intended to apply to the situation we now have under discussion."

We find no reason to recede from our former Opinion 59-31 on the basic question. There is an inescapable conflict of interest involved which clearly would be violative of Canon 6. Although the distinctions sought to be drawn in Opinion 306 of the American Bar Association Committee are apparently only of academic interest in Florida because no "consent" provision of the type there considered has been brought to our attention as being in force in our state, we have no hesitancy in suggesting that in logic only a constitutional provision clearly dealing with the precise question should fairly be construed as public consent. Moreover, it seems that intentional disqualification of a legislator under most circumstances is a positive disservice to his constituents. We also again conclude, one member dissenting, that no sanctity is given to the arrangement if the legislator does not participate in the fees received for the lobbying services. Such arrangements are simply too subject to abuse by virtue of the flexibility inherent in the other financial dealings between partners.

In summary, we conclude that it is violative of Canon 6 for a partner or associate of a member of the legislature to engage in lobbying activities before the legislature, its members or its committees. In our judgment this rule would apply even though the lawyer-legislator did not participate in a fee for such service, and even though he disqualified himself in voting on proposals of interest to the client for whom the lobbying service was rendered. In a few instances acceptance of our view may impose a hardship upon some members of the Bar who offer themselves for public service in the legislature. We trust our opinion will not operate to reduce the interest of lawyers in such service, for we are immodest enough to believe that participation of lawyers is an indispensable element in legislative activity, and that our brethren who have so participated have in overwhelming measure brought honor to our profession. Nevertheless we do not believe that the Canons can be relaxed for the sole purpose of accommodating hardship, particularly when the conflict of interest is so clear. Acceptance of such burden, if it be such, is presumably a necessary corollary of the acceptance of the other satisfactions emanating from public service in the legislature.

Opinion 67-5 Supplemental

April 18, 1967

The conclusion reached in Florida Opinion 67-5 is applicable even though disclosure of the representation by the law firm is made during a political campaign, and the legislator-partner disqualifies himself in accordance with a rule of the Legislature from voting on matters of direct interest to the client.

Canons: 6, 26

Opinion: ABA 306

Chairman MacDonald stated the opinion of the committee:

We are requested to reconsider such portion of our original opinion rendered on March 6, 1967, as may pertain to a situation involving a partnership in a metropolitan Florida community, one of whose members is a member of the House of Representatives of the Florida Legislature. Since approximately 1954 this firm has represented a corporation operating a pari-mutuel betting enterprise in Florida. In the course of general representation of this business one of the partners has appeared and registered as a lobbyist before the House of Representatives of the Florida Legislature. The firm has also on occasion served as lobbyist for other clients whose representation predates World War II.

In 1963 one of the partners of the firm was elected to the Legislature. During the course of his campaign he announced his membership in the firm and its represen-

tation of these clients, together with his decision that he would forego voting on matters of interest to these clients. This decision was made known through press releases and was discussed in the course of various speeches and debates in the campaign. Subsequent to election in 1963, this partner has been returned to the Legislature without opposition in 1964 and 1966, and has been recently re-elected over opposition in the 1967 reapportionment election.

On approximately three or four occasions since election this legislator has refrained from voting under the authority of the appropriate rule of the House of Representatives. This rule in present form is Rule 5.1, and in pertinent part provides as follows:

"Every Member who shall be in the Chamber when a question is put, when he is not excluded by interest, shall give his vote, unless the House, by unanimous consent shall excuse chim. Any Member desiring to be excused on any question shall make application to that effect before the calling of the yeas and nays, and such application shall be accompanied by a brief statement of reasons, and shall be decided without debate."

We are advised that a substantially similar rule is in effect in the Senate in the form of Rule 4.1.

The point is made on behalf of these members of The Florida Bar that the foregoing disqualifications under the appropriate legislative rule, and the election after public announcement of the existence of the lobbying activity, provide the necessary public consent to what otherwise might be a conflict of interest, and is in keeping with the arrangement approved by the Committee of the American Bar Association in Opinion 306.

The Committee has carefully considered this contention, and reviewed its original opinion, not only because of the involved issues of importance to the Bar, but because of the announced intention of the legislator-partner to withdraw from the firm if necessary. Although as mentioned in our original opinion we had apprehended that some hardship might inure to the members of The Florida Bar, it is nonetheless distressing that such hardship may repose upon those who have gone to unique, if not unprecedented lengths to confront and endeavor to resolve the problem. Nevertheless, we conclude, one member dissenting and one member abstaining, that our original opinion is applicable to the situation outlined to us, and that it would be an improper conflict of interest for the lobbying partner to appear before the Legislature in representation of clients under these circumstances. We emphasize again that our opinion is necessarily directed to the conduct of the lobbyist partner and not with the propriety of the conduct of a member of the Legislature, per se, although necessarily the propriety and conduct of one must be analyzed in the light of the actions or status of the other.

With reference to the contention concerning the rule of the House of Representatives, it is our opinion that it does not provide a meaningful consent from the public to the representation of conflicting interests. Although we regret that we were not made aware of the existence of this rule at the time of the rendition of our original opinion, it was made clear at that time that in our judgment only a constitutional provision dealing with the question could fairly be regarded as public consent. Nevertheless we are glad to have the opportunity to alleviate any doubt by consideration of the specific rule, and appreciate the fact that our attention has been invited to the same. This is merely another justification for our repeated caveat that our opinions are advisory only and necessarily rely in most instances upon the facts and circumstances presented to us.

Likewise we find no meaningful public consent in the election after announcement of the possible conflicting interest and intention not to vote. Indeed the instant circumstances present a classic case against the proposition urged. The legislator-partner was initially elected from a field of 27 candidates in the March 1963 reapportionment elections following a brief campaign. We find it difficult indeed to regard votes cast in his favor as representing an informed consent. This is as true as is the converse observation that it would be equally difficult to construe votes in favor of any of his 26 opponents as an expression of disapproval of this arrangement. Subsequently and until the latest reapportionment the legislator has served without opposition, although, of course, duly elected at general elections. In our judgment this is simply not an informed consent. There are numerous qualities of the respective candidates. There are numerous issues in a typical political campaign. The legislator here involved, a person of obvious character and ability, presents many qualities which would be deserving of the choice of voters.

With reference to the particular act of disqualification it is our judgment that this in itself is hardly a solution to the problem. There are many occasions in legislative matters on which the lack of a vote is as important, or indeed more important, than

a vote for or against a particular proposition. In fact the importance of voting is emphasized by its requirement in the very rule cited to us.

We cannot conclude this opinion without offering our unanimous expression of esteem for the members of the Bar who have presented this inquiry to us. The unprecedented steps which they have taken in the past and their announced willingness to promptly abide by the Canons of Ethics as interpreted by this Committee provide noteworthy examples of which all Floridians, both lawyers and non-lawyers, can well be proud.

Senator EAGLETON. All right. You are a legislator for Dade County, right, like an alderman is a legislator for a city.

Mr. SCHREIBER. I am county commissioner.

Senator EAGLETON. And that is a legislative body that passes ordinances; is that correct?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. All right. Now I will direct your attention to certain portions of this opinion. Paragraph 1.

The board of governors of the Florida bar has inquired whether a member of the Florida bar who is a partner of a member of the legislature may accept a retainer to perform lobbying services before the legislature. You are further requested to advise whether a fee sharing arrangement between the legislator and his partner, whereby the legislator would not participate in fees received from lobbying services or an arrangement where by the legislator would refrain from voting on matters of interest to the client paying such fees would affect our answer to the basic inquiry.

Now, we will skip down to the fourth paragraph.

In an earlier opinion—

They cite the number—

The committee on professional ethics of the American Bar held that a lay firm could not accept employment to appear before legislative committees while a member of the firm was serving in the legislature, even upon full disclosure of representation, and even though the lawyer-legislator did not share in any fee received by the firm.

Skipping to the next line, it repeats it,

The reasoning of these opinions was obviously grounded in the inherent conflict of interest in one member of a law partnership serving in the legislature and the other arguing before the legislature with reference to the contents of proposed legislation, and further, in the inability of the public to furnish any meaningful consent to such conflicting representation.

And skip down further. In the middle of the paragraph of page 257,

Moreover, it seems that intentional disqualification of a legislator, under most circumstances, is a positive disservice to its constituents. We also conclude—

One member dissented

That no sanctity is given to the arrangement, if the legislator does not participate in the fees received for the lobbying services. Such arrangements are simply too subject to abuse by virtue of the flexibility inherent in the other financial dealings between partners.

Skipping a sentence,

In our judgment, this rule would apply even though the lawyer-legislator did not participate in a fee for such service, and even though he disqualified in voting on proposals of interest to the client for whom the lobbying service was rendered.

Again, Mr. Schreiber, this fits you to a T. You are a lawyer-legislator. You try to immunize yourself by saying,

Oh, no, I don't participate in those fees over there. I only have my little handshake deal once a year with Mr. Broad, and I might even recuse myself from time to time.

Maybe he does, maybe he doesn't.

This opinion says you can't take that out; that if you are in that firm, regardless of your absolving yourself from participation in the general fees of the firm and the bond fees, you are in hot water under opinion 67–5.

Do you read it another way?

Mr. SCHREIBER. I am aware that a State legislature is not to appear before a State agency. I'm certainly aware that I as county commissioner cannot personally appear before the county commissioner, handle matters before the county commission.

I have conducted myself pursuant to my county attorney's direction. That is the only way I can respond. I have been in practice in this situation that we are talking about today since 1983 or even, really, before, having nothing to go with this board, but other law firms, who may have been some business before, and I have never been questioned. The bar has never written me a letter to cease and desist, asking me to explain, if they have any oversight and wish to discuss the matter, they are, indeed, correct. That is certainly——

Chairman ROTH. I have not had an opportunity to read this carefully, but certainly, a number of questions arise. It is not clear to me, for example, whether this particular ruling applies to county commissioners; whether the term "legislator" is used in that sense. It may or may not.

But I think it is important to understand that this is based upon someone not accepting a retainer to perform lobbying services before the legislature. And I am not aware that the gentleman before us has been providing that service.

Senator EAGLETON. That is the law firm, Mr. Chairman. The law firm can't accept a retainer. He is a legislator.

Chairman ROTH. That may or may not be.

Mr. SCHREIBER. That may or may not be.

Chairman ROTH. That may or may not be. I don't know. First of all, I would go back to the basic fact: That he has relied upon the county attorney, and I think the presumption is that he is entitled to do so.

We are not aware of what lobbying services were given by Mr. Schreiber nor can you necessarily say that the organization was lobbying. That is also a term of art.

The opinion also speaks of a member of a law partnership. I go back to the 1985 opinion, where the county attorney does not find him to be a member of a law firm. But these are things you can argue in one way or another.

But again, I think the key question is whether or not this gentleman is qualified to assume the job of a governor of the board.

Senator EAGLETON. The key question is, Is he qualified in integrity, and are his ethics such as to warrant us confirming him for this very, very important position.

Chairman ROTH. You are asking us to go behind the county attorney.

Senator EAGLETON. No, no. I am asking him to stick with the Florida bar.

Did you make any inquiry of the Florida bar before you embarked upon your relationship with Broad & Cassel?

Mr. SCHREIBER. I relied on Mr. Ginsburg to tell me what kind of relationship I could have.

Senator EAGLETON. Ginsburg has no supervision of your license to practice law; is that correct?

Mr. SCHREIBER. That's correct.

Senator EAGLETON. Only the Florida bar.

Mr. SCHREIBER. That's correct.

Senator EAGLETON. And the Committee on Ethics.

Mr. SCHREIBER. Yes, sir. So far they have not started any proceedings or inquiries to revoke my license. They have not informed me my right to practice as a commissioner has been violated whatsoever.

Senator EAGLETON. Will you cooperate with them if——

Mr. SCHREIBER. Certainly.

Senator EAGLETON [continuing]. If they do commence such an inquiry?

Mr. SCHREIBER. Certainly.

Senator EAGLETON. You commenced this relationship with Broad & Cassel in April 1983, and you got the Ginsburg opinion in January 1985, a long, long gap.

You asked for it November 1984, right? You got it in January of 1985. You told us that there are, under the procedures and guidelines, there are some discussions over there, but only five firms can be eligible, right? You gave us the history of that.

Mr. SCHREIBER. Right.

Senator EAGLETON. So if Broad & Cassel is to get on the list, somebody has to get off the list. It is just as simple as that?

Mr. SCHREIBER. Yes; mathematically, yes, sir.

Senator EAGLETON. Did you have any discussions during calendar 1985 with anybody in county government about Morgan, Lewis & Bockius, a firm that was then on the list?

Mr. SCHREIBER. I am sure in my responsibility as a commissioner, the firm's name had come up on different occasions as it related to the work they were doing for the county.

Senator EAGLETON. Were you dissatisfied with the work that they were doing with the county?

Mr. SCHREIBER. I had no firsthand knowledge one way or the other.

Senator EAGLETON. Did you tell anybody in county government that you didn't think the fees they were charging to Dade County were fair?

Mr. SCHREIBER. Yes. I was responsible for having the commission—I'm sorry. I was responsible for having the commission adopt a policy since I am a fiscal conservative, to make sure that bond counsels were paid in a very reasonable manner. And the resolution basically said, if I recall, that no bond counsel would charge the county, Dade County, any more than it charged any other jurisdiction for a similar issue.

In other words, Dade County was not going to pay $1 a bond to X firm if that firm, for a similar issue, would charge, say, city X 50 cents a bond. Yes. I am responsible for that piece of legislation—policy.

Senator EAGLETON. In addition to that policy, that piece of legislation, didn't you specifically address your complaint to the firm of Morgan, Lewis & Bockius?

Mr. SCHREIBER. It was not in the form of a complaint. It was in the form of a policy to save the county money.

Senator EAGLETON. Did you talk to any member of the Dade County Commission—nine of them—did you talk to any of your eight commissioners, fellow commissioners, specifically about Morgan, Lewis & Bockius and say that Morgan, Lewis & Bockius was charging the county too much?

Mr. SCHREIBER. I would say that at the time that the matter was brought up by me as a policy, as a resolution, and in order for me to convince my colleagues of the merits of that resolution, I probably used Morgan, Lewis as an example to support my position, that is correct.

Senator EAGLETON. So you probably used Morgan, Lewis as an example. What commissioners did you talk to about this? Mayor Clark? Did you talk to him?

Mr. SCHREIBER. I would have talked to any commissioner at a meeting of the commission, whoever was present at the time, when that policy was brought up.

Senator EAGLETON. And mentioned specifically Morgan, Lewis & Bockius as an example.

Mr. SCHREIBER. As an example of the discrepancies of the different levels of paying for bond counsel.

Senator EAGLETON. So at commission meetings, you could have talked to Mayor Clark about it?

Mr. SCHREIBER. Had he been present at the meeting, sure.

Senator EAGLETON. You could have talked to Jorge Valdes?

Mr. SCHREIBER. Oh, yes.

Senator EAGLETON. Specifically, do you remember talking to Mr. Valdes?

Mr. SCHREIBER. Well, I'm sure I didn't talk to Mr. Valdes in private. I'm sure if I talked to any of my colleagues, it was at a meeting. Whoever was there, I spoke to. I don't remember when we are specifically talking about, whatever the date of the meeting or that policy would be whatever. That was the date of the meeting.

Senator EAGLETON. You have a hearing room, don't you?

Mr. SCHREIBER. Oh, yes. It would have been commission chambers, yes, sir.

Senator EAGLETON. It could have been true with any of these other commissioners, Dr. Carey?

Mr. SCHREIBER. Correct.

Senator EAGLETON. Mr. Winn.

Mr. SCHREIBER. Correct.

Senator EAGLETON. Mr. Ruvin. Did you talk to Mr. Redford?

Mr. SCHREIBER. I talked to Mr. Redford in the same way at the same time as I would have talked to anyone else.

Senator EAGLETON. You might have mentioned Morgan, Lewis & Bockius.

Mr. SCHREIBER. As an example as to how the commission could save bond fees.

Senator EAGLETON. How about Beverly Phillips?

Mr. SCHREIBER. She's a member of the commission.

Senator EAGLETON. Is she a good commissioner?

Mr. SCHREIBER. That is not for me to decide. That's for the voters of Dade County to decide.

Senator EAGLETON. You just don't have any judgment about the quality of Ms. Phillips?

Mr. SCHREIBER. No, sir.

Senator EAGLETON. Did you talk to Mrs. Oesterle?

Mr. SCHREIBER. I talked to all my colleagues.

Senator EAGLETON. And specifically, about Morgan, Lewis & Bockius as an example——

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON [continuing]. Of the fee structure on bond issues?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. And would you give the same answer to conversations with the following county officials:

Robert Ginsburg.

Mr. SCHREIBER. County attorney, yes, sir.

Senator EAGLETON. Vicki Jay, an assistant county attorney?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. County manager Gary Dellapa?

Mr. SCHREIBER. Well, he is assistant county manager.

Senator EAGLETON. I beg your pardon. You're right.

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. County manager Merrit Stierheim?

Mr. SCHREIBER. Stierheim, I'm not sure I ever discussed it with him.

Senator EAGLETON. Not sure on Stierheim. And finally, I will end this section, county finance director Jose Pagan?

Mr. SCHREIBER. Yes, sir.

Just so the record, if I may add, we have a sunshine law in the State of Florida which prohibits elected officials, somebody discussing matters of commission in private. So for the record, I categorically state that any discussions relative to the issue we are discussing or any other county issue is done in open meeting, duly noticed to the media, et cetera, et cetera.

Senator EAGLETON. Could have you have talked to one of these people I just mentioned, not the commissioners, but off to the side, could you, for instance, have talked to Mr. Jose Pagan off to the side?

Mr. SCHREIBER. Yes. The sunshine law does not require my having to talk to Mr. Pagan, Mr. Ginsburg, or any other staff of the counsel.

Senator EAGLETON. Could you have talked to Mr. Pagan in the Finance Committee?

Mr. SCHREIBER. Oh, sure.

Senator EAGLETON. The same thing, Morgan, Lewis & Bockius as an example?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. Did this resolution that you authorized and have passed, did that relate or did that stem from a Dade County school board bond issue?

Mr. SCHREIBER. That was the precipitous that gave me the idea on how to save my constituents money.

Senator EAGLETON. Isn't it true that Morgan, Lewis & Bockius got the low bid on that, edging out Broad & Cassel?

Mr. SCHREIBER. That is correct, but that wasn't my client. That is the one I told you we had the discrepancy on and I gave it up on. It wasn't my client.

Senator EAGLETON. Yes, but it was your firm.

Mr. SCHREIBER. The answer is yes, Broad & Cassel did not get it. Morgan, Lewis low-balled the figure and obtained it, and it was not my client.

Senator EAGLETON. And you were mad.

Mr. SCHREIBER. No, I was enlightened.

Senator EAGLETON. You became enlightened when Morgan, Lewis beat out the firm of Broad & Cassel, and that enlightened you?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. Did it irritate you?

Mr. SCHREIBER. No.

Senator EAGLETON. Did it irritate Mr. Broad?

Mr. SCHREIBER. I have no idea.

Senator EAGLETON. You didn't talk to Mr. Broad about it?

Mr. SCHREIBER. I am sure I did, but whether he was irritated or not, I didn't ask.

Senator EAGLETON. Did you talk to Broad?

Mr. SCHREIBER. Oh, yes. I think he was the one that informed me and the other people in the firm we did not get the work.

Senator EAGLETON. Then you put this resolution in?

Mr. SCHREIBER. No. I thought about what had taken place, and I realized that the school board was doing something that the county ought to do, and I spoke in private to Mr. Ginsburg and Ms. Vicki Jay and Jose Pagan, and they thought it was a very good idea, and I asked them to prepare the resolution. Then I submitted it to my colleagues.

Senator EAGLETON. For what it is worth, Mr. Chairman, I ask unanimous consent to put the previously referred to resolution in the record at this point, I think. Do you all have a copy? I'm sorry. I thought you had. I am not going to question from it.

Chairman ROTH. Without objection.

Senator EAGLETON. It is just a resolution he has been talking about.

Chairman ROTH. Without objection, so ordered.

[The document referred to follows:]

Agenda Item No.
5/1/84

RESOLUTION NO. R567-84

RESOLUTION CONCERNING BOND COUNSEL FEES; REQUIRING FEE AGREEMENT AT COMMENCEMENT OF ENGAGEMENT; ESTABLISHING GUIDELINES

WHEREAS, this Board has heretofore selected five sets of County bond counsel for all bonds issued by the County, its boards, agencies and authorities; and

WHEREAS, this Board desires to ensure that the County is paying a mutually equitable fee for the services rendered by such bond counsel;

NOW, THEREFORE, BE IT RESOLVED that all County bond counsel shall enter into an engagement agreement with the County prior to undertaking an assignment, which agreement shall include the fee to be paid to such bond counsel. Said fee shall not exceed the maximum rate such bond counsel has charged any other governmental entity.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Barbara M. Carey
Clara Oesterle
Beverly B. Phillips
James F. Redford, Jr.
Harvey Ruvin
Barry D. Schreiber
Ruth Shack
Jorge E. Valdes
Stephen P. Clark

The Mayor thereupon declared the resolution duly passed and adopted this day of May, 1984.

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

RICHARD P. BRINKER, CLERK

By: _____
Deputy Clerk

Approved by County Attorney
as to form and legal sufficiency.

Senator EAGLETON. So let's see where we are, up until now. Morgan, Lewis is one of five firms on the coveted list. In order to get on the list, somebody has got to come off to permit Broad & Cassel to get on. Mr. Schreiber possibly talks to as many as 8 commissioners and 4 county officials, probably not Merrit Stierheim; 4 others, that is 12 people about Morgan, Lewis & Bockius or Morgan, Lewis, whatever it is called. He becomes enlightened enough to introduce a resolution because Morgan, Lewis is, to use his word, low-balling.

We talk about a term of art. That is a term of art in the business hustle trade, low-ball. So Morgan, Lewis low-balled Broad & Cassel, and we get this resolution from the counsel, and then later on, Morgan & Lewis gets executed, and we are going to go into that. Broad & Cassel gets on the list. Broad and Cassel wanted to expand their bond business.

Does that all sound coincidental to you, Mr. Schreiber?

Mr. SCHREIBER. I have no problems with it, sir.

Senator EAGLETON. You have no problems with that?

Mr. SCHREIBER. No, sir.

Senator EAGLETON. All right. Let's go to the finance committee meeting on November 13, 1985. You are a member of the finance committee?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. Did you attend that meeting?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. It was only a couple of months ago.

Mr. SCHREIBER. Yes, I did. It is in my calendar. Not only that, I have the summary of minutes of that meeting, and I am listed as having been there, so I was there.

Senator EAGLETON. You were there. Do you remember Beverly Phillips being there?

Mr. SCHREIBER. I always remember Beverly Phillips being there.

Senator EAGLETON. You don't seem to like Ms. Phillips.

Mr. SCHREIBER. I didn't say that. I will always remember you here, too. [Laughter.]

Senator EAGLETON. Was Jim Redford there?

Mr. SCHREIBER. Yes, he was there.

Senator EAGLETON. Was Harvey Ruvin there?

Mr. SCHREIBER. Yes, he was.

Senator EAGLETON. What is your version of what went on there with respect to Morgan, Lewis & Bockius bond counsel and the like? Let's focus on that subject.

Mr. SCHREIBER. Nothing.

Senator EAGLETON. Nothing?

Mr. SCHREIBER. Nothing. These minutes do not reflect any conversation whatsoever on Morgan, Lewis or whatever else. The minutes certainly speak for themselves. I have also been informed——

Senator EAGLETON. Yes, if they're accurate.

Mr. SCHREIBER. I have also been informed that the tape of the meeting has been listened to, and there is nothing on the tape relative to Morgan, Lewis. That is all I can respond.

Senator EAGLETON. If the tape recorded a complete meeting. If Beverly Phillips remembered something going on at that meeting,

is she just off her nut about the Morgan, Lewis situation bond counsel and the like?

Mr. SCHREIBER. The only answer I can have is that the minutes reflect no discussion; the tape reflects no discussion; I recall no discussion. I can't comment on what Beverly Phillips thinks may or may not have taken place.

Senator EAGLETON. If Jim Redford made reference to something going on there at that meeting about Morgan, Lewis & Bockius, is he just up a tree?

Mr. SCHREIBER. I have been informed that Mr. Redford, on this same issue, indicated that something came up on some particular meeting, and I recused myself, so there, I will readily admit, Mr. Senator, that at a finance committee meeting or at any other time, if that issue of what you are talking about, replacing Morgan, Lewis or this or that came up, I recused myself.

But as it relates to the meeting of November 13, the minutes and the tape reflect that it did not take place at that time.

Senator EAGLETON. At what meeting did the Morgan, Lewis thing come up where you did recuse yourself?

Mr. SCHREIBER. I have no idea, because I wasn't there.

Senator EAGLETON. How do you recuse yourself when you are not there?

Mr. SCHREIBER. By the act of my recusing I am no longer there.

Senator EAGLETON. Did you file a notice of recusal?

Mr. SCHREIBER. No, you simply leave the room.

Chairman ROTH. Could I ask a question with respect to the minutes? Are those approved at a subsequent meeting?

Mr. SCHREIBER. No. These minutes are simply the compilation of what was on the tape. Someone listens to the tape, makes the minutes from the tape, and these are then given to the commission at a subsequent commission meeting for acceptance. But it's a cursory type of act.

Chairman ROTH. But they are submitted later, so that if anybody felt they were inaccurate——

Mr. SCHREIBER. Oh, yes. There is no question. These are the official minutes of the finance committee meeting of November 13, 1985, and if something took place or something was discussed at that meeting that are not on this minutes, somebody better find out where, how, and what-not. But it did not take place if they're not on the minutes.

Chairman ROTH. Any member there could later object if they felt they weren't accurate?

Mr. SCHREIBER. Oh, yes. Certainly, at the time it is on the commission agenda for perfunctory acceptance, if someone said, "Oh, didn't we discuss item so and so," that would be the time to put it on. Otherwise, these would be the official minutes of any particular meeting.

Senator EAGLETON. Mr. Chairman, I would like to introduce in the record, and I will hand to the witness, a copy of the Florida statutes, section 112.3143, sub 3, passed, I am told, in 1984.

Are you familiar with that statute, Mr. Schreiber?

Mr. SCHREIBER. I believe that Mr. Ginsburg and I probably reviewed this at such time as Mr. Ginsburg gave me his opinion on how to conduct myself.

Senator EAGLETON. Does Mr. Ginsburg cite this statute in his opinion?

Mr. SCHREIBER. I don't know.

Senator EAGLETON. I think he does.

Mr. SCHREIBER. If he does not, he does not. If he does, he does. I don't know. I did not draw the opinion.

Senator EAGLETON. But he does not cite in his opinion the key line. For the purposes of this line of inquiry, it reads as follows: "Such public officer—" that is you "—shall, prior to the vote being taken, publicly state to the assembly the nature of the interest in the matter from which he is abstaining from voting."

Did you do that in this finance committee meeting whenever it took place, when Morgan & Bockius came up?

Mr. SCHREIBER. I cannot answer that except to say that I don't remember any time that issue coming up. I either wasn't there or recused myself, but I, again, reiterate that I conduct myself and do what Mr. Ginsburg tells me to do. And as I read this, no county municipal or other local public officer shall vote in his official capacity in any measure that assures in his activity nor shall knowingly vote into his official capacity upon which he may assure a special gain, profit," et cetera, and then you must file this notice.

I have never had to file such a notice.

Senator EAGLETON. It tells you how to recuse yourself, the line I read you.

Mr. SCHREIBER. The rules of the county commission may differ from the rules of the State legislature.

Senator EAGLETON. Well, this is binding on the whole State.

Mr. SCHREIBER. No, sir; no, sir.

Senator EAGLETON. Yes, it is.

Mr. SCHREIBER. No, sir; I can't accept here today that the Florida—the statutes govern a home rule charter county. Whatever rules that we——

Senator EAGLETON. Can we write the attorney general on that one?

Mr. SCHREIBER. I am not interested in the attorney general. I am interested in the Dade County attorney.

Senator EAGLETON. Mr. Ginsburg mentions the statute by number in his opinion of January 9, to which you referred, but he does not cite or mention the specific three lines that I am addressing to you, to wit, how one legally and legitimately recuses oneself. Do you know what the purpose of notifying on recusal is? So that the public knows.

It isn't devious and underhanded. So that the public knows up front.

Senator Roth knows how we do it in the Senate. We publicly, on the floor of the Senate, if there is a matter in which we have an interest, vote present, so the press gallery and the whole public knows that we have recused ourselves because of the financial interest or whatever the interest may be.

Chairman ROTH. I would like to make a comment on that, because I think that is a very relevant point.

There are a lot of technicalities in the law, and of course, it is always easy to go on a fishing expedition and try to show someone in violation of them.

Senator Eagleton has stated that one is not supposed to vote on the Senate floor where there is a conflict of interest. And yet I think by the kind of standard that is being discussed here, a lot of Senators would be embarrassed. How many Senators who have agricultural interests, for example, continue to vote on farm programs? So that you know, I know we are trying to find some technical violation. But as I said, I am afraid a lot of people might be embarrassed if we tried to use the same kind of approach here.

Senator EAGLETON. Mr. Chairman, if you or I became of counsel of a law firm, we would be expelled from the U.S. Senate.

Chairman ROTH. That happens to be a relatively recent rule, but I can tell you that, for many years, the Chairman of the House Judiciary Committee, Mr. Sellers, served 1 or 2 days a week in New York.

Senator EAGLETON. You are talking about relatively recent rules that are applicable to Mr. Schreiber. This statute was passed in 1984.

Chairman ROTH. But what I am saying is that he relied upon the county attorney. I think he is entitled to do so. I admit you can try to find some technical violations, but that is not grounds for ruling out public service with the Federal Government.

Mr. SCHREIBER. Mr. Chairman, with your permission, for the record, I just want to let the committee know the procedure used in Dade County. I can't comment on whether it's correct procedure, whether it follows State law, but it is the procedure that our county attorney has told us to follow.

If an issue comes up where we have a personal interest, forget lawyers, forget of counsel, let's say you own a taxi permit and an issue on the taxi fee comes up. He advises us to simply walk out of the room. We don't have to file anything. We don't have to make any comments. We pick ourselves up, and we walk out of the room.

If, on the other hand, by accident or you determine later that you voted on something that you shouldn't have voted on, then he says you ought to file your notice and put it in the clerk's records. Now, that is the procedure that I have followed in all good conscience and will clearly follow any other kind of procedure that the county attorney lays down for us.

Senator EAGLETON. Let's move on, then, to the commission meeting which took place on November 21. Do you remember that day or that meeting?

Mr. SCHREIBER. That was a zoning meeting, yes, sir. It was a Thursday.

Senator EAGLETON. Your books and records show you went to the commission on November 21?

Mr. SCHREIBER. Yes. I believe—I think—no. No, I was there. Yes. I thought I may not have been there in the morning, but I was there.

Senator EAGLETON. And that is the meeting where Redford brings up the motion to drop Morgan, Lewis and to replace them with Broad & Cassel.

Mr. SCHREIBER. That is correct.

Senator EAGLETON. You, in your earlier testimony, said all of this must have done with the knowledge of Mr. Ginsburg, right?

Mr. SCHREIBER. I don't know what relationship or what discussions ensued between Mr. Redford and Mr. Ginsburg, but I did say before that if at the meeting what Mr. Redford did and what—five other commissioners—four other commissioners did not have the approval of Mr. Ginsburg, it would not have been done. But I have no idea of what took place.

Senator EAGLETON. Mr. Ginsburg said he was totally surprised, because the award of a service contract like this, ousting Morgan & Bockius, the firm you have been complaining about and putting in Broad & Cassel, your firm, is studied first by the county attorney's staff. This one came up out of the blue.

What do you think about that?

Mr. SCHREIBER. Well, with all due respect, Mr. Eagleton, and I say this very sincerely, I had no involvement in that process whatsoever. I had no discussions with Mr. Ginsburg, no discussions with Mr. Redford, indeed, no discussions with Mr. Broad or the firm. And what I would really like to add—and I'm not trying to be humorous in any way—if they would have asked me or told me, I would have certainly said, "Please don't do this until this confirmation hearing with the Senate is over."

Senator EAGLETON. That would have been clever.

Mr. SCHREIBER. So I had no involvement whatsoever. They didn't tell me. They didn't ask me. I was not involved.

Senator EAGLETON. "Don't do anything a little off color until I have been passed through the Senate."

Mr. SCHREIBER. If that is how you wish to perceive.

Senator EAGLETON. How else can you perceive it?

Mr. SCHREIBER. I had no involvement in it whatsoever.

Senator EAGLETON. Redford makes this motion. He also says—this is on the tape at the commission meeting—"I lost this in committee, finance committee by a 2 to 1 vote, and I bring it back requesting that there be a replacement. One of our counsels, namely, Morgan, Lewis & Bockius—" and then he goes on to propose Broad & Cassel.

You left by that time?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. And five commissioners voted on it? Is that right? Was it 4 to 1? 5–1? 5–1. Ms. Phillips voted no, and five other commissioners voted yes, five other Commissioners that you may well have talked to on previous occasions at commission meetings about Morgan, Lewis & Bockius, for example, of their fee structure. Correct?

Mr. SCHREIBER. I'm not sure that is a question or a statement.

Senator EAGLETON. "Correct?" is a question.

Mr. SCHREIBER. Can you repeat the question?

Senator EAGLETON. Five commissioners voted in favor of deleting Morgan, Lewis & Bockius and substituting in lieu thereof your firm, Broad & Cassel. That is a fact. On previous occasions, you had talked to many commissioners, complaining about Morgan, Lewis & Bockius, about their fee situation for example, just for example purposes, and you had introduced a resolution that the council passed when Morgan & Lewis low-balled your firm on the bond issue. Correct? Question mark.

Mr. SCHREIBER. The way you say it, I would prefer to phrase it this way, if I can.

Senator EAGLETON. Go ahead.

Mr. SCHREIBER. On a previous occasion, which we discussed, I was able to inform my colleagues how the Dade County Commission could save dollars, constituent dollars, taxpayers' dollars in payment of fees to bond counsel. At that time, I was able to utilize an example to bring it to the commission's attention.

That is what I did, and I take credit for that, and I am proud of that.

What the commission subsequently did on this date in question, you have to ask the other commissioners who voted for it, as I was not there and did not vote as to what they voted for. Morgan, Lewis was one of five. They are no longer one of five. I have played no role in that whatsoever.

Senator EAGLETON. Hadn't you poisoned the well a little bit?

Mr. SCHREIBER. Is that a question or a statement?

Senator EAGLETON. That was a question. Hadn't you poisoned the well a little bit with respect to Morgan, Lewis & Bockius?

Mr. SCHREIBER. I believe I saved the taxpayers of Dade County substantial fees, and I think it is important to realize that that policy that's now in place covers all existing bond counsels, as well.

Senator EAGLETON. One of the existing bond counsels is Broad & Cassel?

Mr. SCHREIBER. More power to them.

I would like the committee to know that Broad & Cassel is, indeed, one of the larger and more prestigious firms in town, and if they were successful in obtaining this work from the county, to their credit. In that law firm is a gentleman by the name of Barry Kuten, who is a—presently a State legislator who is running for governor.

Senator EAGLETON. We will get into him in the next case, but that is fine.

Mr. SCHREIBER. Also Al Cardanas, who is a major player in the Republican party in Dade County, and Marvin Cassel, a major player in the Democratic party in Dade County, all members of a firm, doing whatever they could to get that business for Broad & Cassel. I played no role.

Senator EAGLETON. All these players, major players in the vernacular, major players doing all they can to get business.

Mr. SCHREIBER. Exactly. The same thing that the other four——

Senator EAGLETON. You don't want to get low-balled again.

Mr. SCHREIBER [continuing]. The same thing that the other law firms, which has former Governor Rubin Askew, former Attorney General Bob Shevin, former Senate Senator Ken Myers do and did to obtain bond counsel work from the county.

Senator EAGLETON. At the conclusion of the meeting, the full commission meeting on the 21st, from the transcript, Commissioner Phillips says this: "Deliberately or not, I think doing business with ourselves is not good business."

What did she mean by that?

Mr. SCHREIBER. I have no idea. I would guess the same way others may want to guess. I have no idea. I wasn't there.

Senator EAGLETON. What she meant, of course, was that doing business, Commissioner Schreiber and the Dade County Commission doing business with Commissioner Schreiber's firm, doing business with ourselves, is not good business. I say amen to Commissioner Phillips. But she got outvoted.

Chairman ROTH. Could I ask a couple of questions at this point on that matter?

Senator EAGLETON. Oh, OK.

Chairman ROTH. As I understand it, that there was a 5 to 1 vote by the commission——

Mr. SCHREIBER. Yes, sir.

Chairman ROTH [continuing]. While you were not there. Did you ever have an opportunity to listen to the hearings?

Mr. SCHREIBER. No.

Chairman ROTH. The tape?

Mr. SCHREIBER. No, sir; I guess I had an opportunity, but I did not.

Chairman ROTH. You did not?

Mr. SCHREIBER. It is on cable television.

Chairman ROTH. But is it accurate to say that the commission, when they held that vote, knew of the situation of your relationship of the law firm?

Mr. SCHREIBER. Well, I certainly didn't hide it. I would assume, if Commissioner Phillips knew, based on the statement that was just read, then the other members of the commission also knew.

Chairman ROTH. Was the county attorney there?

Mr. SCHREIBER. I believe he was, yes.

Chairman ROTH. Was he aware of it?

Mr. SCHREIBER. Was he—certainly, he had to be aware, since he gave me these various opinions. Certainly.

Chairman ROTH. Would he, if he thought there was something unethical or inappropriate, be in a position to speak out?

Mr. SCHREIBER. I would certainly hope so. And I would certainly hope that our county attorney protects the board of county commissioners to the fullest degree and wouldn't allow the commission, whether I was there or not there, to do something against the law or against its interest.

Chairman ROTH. Has there been any complaint about it since?

Mr. SCHREIBER. Complaint?

Chairman ROTH. About the action of the commission?

Mr. SCHREIBER. From Morgan, Lewis, yes, sir.

Chairman ROTH. From Morgan, Lewis?

Mr. SCHREIBER. Yes, sir.

Chairman ROTH. Anyone else?

Mr. SCHREIBER. Not that I'm aware of.

Chairman ROTH. Senator Eagleton?

Senator EAGLETON. Remember, for the record, that Mr. Ginsburg said he was taken totally by surprise and that these matters—meaning bond counsel service contracts—are studied first by the county attorney. This was a surprise procedure. Ginsburg wasn't asked. If he had been asked, things might have been different.

All right. Now, let's move on to the next case. I have about a 2 minute intro on the case to set the background, Mr. Chairman.

This is the Agripost case.

In early 1983, Agripost, a private company, proposed that the Dade County Industrial Development Authority—that is not Mr. Schreiber's entity—approve a bond issue to support a $17 million project the company envisioned in which it would convert county garbage to soil conditioner. The Industrial Development Authority rejected that proposal.

Agripost then took the plan to the Dade County Board of Commissioners, Mr. Schreiber's group. The commission approved the project and, using the rotating system that has been previously described, selected its bond counsel, and Morgan, Lewis & Bockius came up as the bond counsel on this one.

Morgan, Lewis & Bockius had deeply felt doubts about the prospects for the success of the firm—this is Agripost—and for that reason, it insisted on a strictly enforced, full disclosure. Remember, the bond counsel are, in essence, the guardian of the public and potential buyers. That is why we require them, and that is why they could require all kinds of disclosure, depending on how risky the project is.

Agripost would not go along with the law firm's requirements for the disclosure. As a result, Morgan, Lewis & Bockius refused to give its approval to the bond issue. And the proposal was formally dropped in January of 1984.

Broad & Cassel's involvement in the Agripost matter occurred sometime in 1983, when Agripost officials expanded their legal representation in promoting this very bond issue that we are talking about. Initially, it engaged the Miami firm of Sparber & Shevin in connection with the bond issue. Now, it also engaged Broad & Cassel to serve as cocounsel.

The Miami Herald reports today that in May 1983, after Agripost had hired Broad & Cassel as co-counsel, Commissioner Schreiber, an employee of Broad & Cassel, Mr. Schreiber voted to authorize the bond issue.

Did you vote to authorize the Agripost bond issue?

Mr. SCHREIBER. I wouldn't want to say this: Because the Herald said so, that I did.

Senator EAGLETON. I didn't hear that.

Mr. SCHREIBER. I wouldn't say that just because the Herald said that I did, but as they classified me as a member of the firm or something along those lines, that is inaccurate. But I certainly remember the Agripost case, and I'm sure I voted on it.

Senator EAGLETON. Were you or were you not with Broad & Cassel at the time you voted on Agripost?

Mr. SCHREIBER. What date was that, sir?

Senator EAGLETON. November 1, 1983.

Mr. SCHREIBER. Yes, I joined Broad & Cassel May 1983. Yes, sir. Sure.

Senator EAGLETON. You went with them in April or May of 1983. So you went with Broad & Cassel, and then you voted on this matter that authorizes the bond issue, right?

Mr. SCHREIBER. I can't tell you precisely what item I had voted on or didn't vote on. But I recall the Agripost issue. If there is any resolution or any ordinance that would be presented that showed that I was present and voted on it, I would not take issue with

that. I don't know anything beyond that. I mean, it wasn't my client.

It was a client of Broad & Cassel, and there was a major, very important aspect to that Agripost, which I would be happy to explain.

Senator EAGLETON. Yes, go ahead.

Mr. SCHREIBER. OK. As a county commissioner, we have a very serious problem as to the disposal of waste products, resource recovery, and Agripost came to us, and its owner or founder, the late Paul Faske, was a very good friend and supporter of those people on the commission, all of us. He was a very noted civic leader. He came to us with a project.

Senator EAGLETON. You mean contributor?

Mr. SCHREIBER. I'm sure he contributed to political campaigns, yes.

Senator EAGLETON. To yours?

Mr. SCHREIBER. I would think that my financial disclosure, which I filed for the public to see, contains a contribution. I can't tell you how much. But I certainly wouldn't deny receiving anything from Paul Faske. He was a marvelous individual.

He presented us with this idea, and those of us who felt that it was indeed a good idea—and I think the records will probably reflect that most of this was done in a unanimous basis. The commission pretty much felt the same way. And we just felt that it was incumbent to try to assist in any way possible, because in assisting Agripost, we were solving a major resource recovery problem in Dade County.

So we all felt committed to the project Morgan, Lewis had been appointed—should I continue?

Senator EAGLETON. Were the bonds ever marketed?

Mr. SCHREIBER. I don't believe they were.

Senator EAGLETON. In essence, the Agripost thing was a flop, wasn't it?

Mr. SCHREIBER. Unfortunately, it was.

Senator EAGLETON. It was a flop. Morgan, Lewis recognized it as a flop.

Mr. SCHREIBER. Well——

Senator EAGLETON. Wouldn't authenticate it because it would require more disclosure after Broad & Cassel took it on and Schreiber voted for it on the county commission.

Mr. SCHREIBER. I probably voted for it prior to Broad & Cassel being involved and may have continued to vote for it after Broad was involved. I did so, I'm sure, following Mr. Ginsburg, our county attorney's—once again, that there was no conflict, since I wouldn't inure to any benefit, financial or otherwise, from that situation.

I don't know what else to say.

Senator EAGLETON. You really liked this Agripost deal, didn't you?

Mr. SCHREIBER. Really liked it?

Senator EAGLETON. Yes.

Mr. SCHREIBER. I thought it would serve a very useful purpose for Dade County.

Senator EAGLETON. A very useful purpose. And in this instance, where you might have had at Morgan & Lewis, because Morgan & Lewis was going to kill the deal?

Mr. SCHREIBER. Might have had? No.

Senator EAGLETON. What is the other word, exuberant? What other word did you use, exhilarated. Were you enlightened again?

Mr. SCHREIBER. No, I was not enlightened.

Senator EAGLETON. What were you, what verb?

Mr. SCHREIBER. Disappointed.

Senator EAGLETON. Disappointed. Do you ever get miffed at Morgan & Lewis?

Mr. SCHREIBER. Miffed?

Senator EAGLETON. Yes, angry, peeved, petulant.

Mr. SCHREIBER. I try not to do that with anyone if I can help it.

Senator EAGLETON. If you can help it. So you are either enlightened or disappointed?

Mr. SCHREIBER. There are other adjectives to fit the case, but I try not to get angry, not get mad. I try to deal with issues and not personalities.

Senator EAGLETON. Morgan, Lewis is an issue here. Morgan & Lewis had to go for Broad & Cassel to get on the playing field. Morgan & Lewis had too many people out to get them, complaining about them; talking to people about them, and then there would be a vacancy at Broad & Cassel to get in the bond ballpark, and they always won in the bond ballpark, as late as November 1984. That is when Schreiber goes to get his opinion from Ginsburg, after a year and a half of being with Broad & Cassel, because that was the time they were going to make their move.

[Short recess.]

Chairman ROTH. The committee will be in order.

Senator EAGLETON. Mr. Chairman, while it is on my mind, let me put into the record—and I ask no comment on it, but just so I have it in the record—a series of statutes, ethics rulings, et cetera, and I just would like to have them in the record for future reference for people to draw such opinions from them as they desire.

The Florida statute 112.313, sub 7; Florida statute 839.10; Florida statute 112.312, it looks like sub 2; Florida Commission on Ethics Opinion No. CEO 82-53. This is one I referred to in part: Florida statute 112.3143, sub 3, in its entirety; and Florida Bar Opinion 74-8, dated June 14, 1974; canon 8 of the Florida Bar Ethics Code of Professional Responsibility, disciplinary rule DR8-101, and canon 9, Florida Bar Code of Professional Responsibility.

I ask that they be printed at the end of the record.

Chairman ROTH. I would ask one of my staff members to look over these.

Senator EAGLETON. Hold your ruling and she can be looking at it as we are moving along. Also, at the same point, I would ask inserted at the end of the record two articles from the Miami Herald, one dated December 7; one dated December 12; a series of articles dated December 13; an article or two dated December 12. I ask that

they be made part of the record at the end of the record. I will pass those over to you.

We will move on——

Chairman ROTH. Please proceed.

Senator EAGLETON [continuing]. While staff is reviewing them.

This is our final matter, Mr. Chairman, and again, I would like to set the backdrop of this case. This is Scott Estates Homes Inc., a zoning case.

A developer—initially it was known by the name of William Soman, trustee, and subsequently, it was known under the name of Scott Estates Homes, Inc.—was seeking to have a parcel of 9 acres located in an established southwest Dade County residential area rezoned to allow what is called zero lot line construction. In effect, the rezoning would make it possible to build 15 houses more than would be allowed under the existing zoning, if you got to the zero lot line business.

In procedural sequence, here is what happened: The developer first took his case to the Dade County Planning Department; then to the Dade County Building and Zoning Department; and then to the Dade County Department of Environmental Management. All three departments recommended against the rezoning request, against the development.

The developer next took the case to the Dade County Zoning Board, and the board voted against the developer. They voted. We don't have the vote yet. They are still tallying.

On September 11, 1985, the developer's case was heard by the Dade County's Zoning Appeals Board. They voted 5 to 2 against the developer. So the developer, up until now, has lost in three departments. He has lost in the Dade County Zoning Board, and now he loses 5 to 2 in the Dade County Zoning Appeals Board.

As a last resort, the developer, under the name now of Scott Estates Homes, Inc., appealed its request to the Dade County Board of Commissioners, Mr. Schreiber's group. The commissioners voted 4 to 2 in favor of the developer. And the vote was recorded as follows: For: Schreiber, Wynn, Clark, and Valdes; Against, Phillips and Oesterle.

From the very beginning of this rezoning effort, Mr. Barry Kutun was the lawyer representing the developers. Mr. Kutun is a Florida State Democratic Representative also, like Mr. Schreiber. Mr. Kutun is of counsel with the firm of Broad & Cassel.

Mr. Schreiber, do you recall the hearing that was held for the Dade County Board of Commissioners on October 3 with respect to this Scott Estates Homes rezoning?

Mr. SCHREIBER. Not specifically recalling the hearing itself. I mean, if you ask me the issues involved, no, but I mean I certainly can recall the application, in that sense.

Senator EAGLETON. And you knew Mr. Kutun was there representing the developer?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. And Mr. Kutun is of counsel with Broad & Cassel, as you are of counsel with Broad & Cassel, correct?

Mr. SCHREIBER. Yes, sir. Yes, sir.

Senator EAGLETON. Do you remember being a very active, vocal participant in that commission meeting, speaking for the developer?

Mr. SCHREIBER. No. I could not say whether I was active or vocal. I may have made certain comments, asked certain questions, but active would be too much of a description to use. If I could hear the tape——

Senator EAGLETON. Active would be too much of a description?

Mr. SCHREIBER. Active, active. It could be. I don't recall the specific hearing. I always ask—sometimes ask questions. I sometimes make statements, but whether you would say it was active in that particular case, I couldn't say.

Senator EAGLETON. You were for the developer?

Mr. SCHREIBER. I guess my vote was one of the four.

Senator EAGLETON. Would you say your questions that you asked, and your participation in the meeting, gave one the impression that you were for the developer all the way?

Mr. SCHREIBER. I have no idea. That's a perception. I don't know.

Senator EAGLETON. Do you remember Mr. Brody being there, a lawyer for the homeowners, the other side of the case?

Mr. SCHREIBER. I remember objectors being there. I couldn't recall whether it was Mr. Brody or not. There are objectors on some issues.

Senator EAGLETON. Well, they had a lawyer named Mr. Brody. It was clear to at least Mr. Brody and some of the homeowners that you were very actively interested in this case on behalf of the developer.

Here you have got a rezoning case; Broad & Cassel is involved. You are with Broad & Cassel, of counsel; Kutun is with Broad & Cassel, of counsel; and you are a participant in the case. You ask questions that lead some people to believe that you are for the developer, and then you vote for the developer. And the vote was 4 to 2.

That is about how it occurred, right?

Mr. SCHREIBER. Not quite.

Senator EAGLETON. Go ahead.

Mr. SCHREIBER. First of all, with your permission, I would just like, for the record, to show the procedure that the Dade County Commission or Dade County follows in all zoning cases.

The way it was described, it was like it was something unique or something out of the ordinary. I don't want the record to reflect that. Anyone has the right to file an application for rezoning for variances or what-have-you. Once doing that, staff, meaning the building department and the planning department, review it. They come to their conclusions, and they make certain recommendations for approval, for denial. It is standard operating procedure.

When that is done, the applicant has a choice to go forward, depending on whether there are variances, at zoning level. The first level of adjudication is at the zoning appeals board. I don't want anyone to say the zoning appeals board is really an appeal from something. That is the first level to get permission, authorization, for any zoning application.

The zoning appeals board, then, is an appointed body, appointed by the commission, and they make a ruling. The applicant has the

right to appeal that ruling to the board of county commissioners, and those who object have the right to appeal if the application is approved by the zoning appeals board.

When it comes to the commission, it comes to the commission de novo. It is really irrelevant to us, so to speak, what the zoning appeal board ruled or why it ruled that way. We have a right to hear it from scratch.

That is the procedure that is followed in every single zoning application, this one included.

Now, to address this particular issue, I know Barry Kutun. I have known Barry Kutun for a long time. Barry Kutun, on this particular application, presented his case just like any other lawyer would present his case. I certainly knew Barry Kutun was with Broad & Cassel.

Mr. Ginsburg, county attorney, in the past, this being no different from any other direction that he gave me, clearly gave me the right to vote on Mr. Ginsburg—on Mr. Kutun's application. Indeed, it was not my client whatsoever. It was Barry Kuten's client, or, if you will, Broad & Cassel's client, and I will comment on that in a moment, because it is interesting, because some of the information may be of interest.

In any event, after giving the applicant, the developer a full hearing, and, I hope, asking the kinds of questions that should be asked to determine the merits of the application, I voted for the application and voted my conscience.

I learned this morning, coincidentally, that this application was not even a client of Broad & Cassel. It was a private application handled privately by Barry Kutun, no fees of which went to Broad & Cassel.

Senator EAGLETON. If the tape of that meeting said that at the outset, Mr. Kutun got up and said, "I am Barry Kutun of Broad & Cassel——"

Mr. SCHREIBER. That is correct. That is correct.

Senator EAGLETON [continuing]. Wouldn't one have a right to a fair conclusion that he was of Broad & Cassel?

Mr. SCHREIBER. Conclusions are one thing, and I certainly admit to you that I know Barry Kutun. I know Barry Kutun. In fact, his office is next to mine. So I know he is with Broad & Cassel; he doesn't even have to tell me that he is with Broad & Cassel.

But again, the county attorney has authorized me, has allowed me to vote on Broad & Cassel matters where I do not have a financial interest in its outcome.

In addition, in this particular case, this wasn't even a Broad & Cassel matter, although Barry Kutun represented himself as being with Broad & Cassel.

I would like——

Senator EAGLETON. Go ahead.

Mr. SCHREIBER. In this particular instance, I would like to add—because it is always nice to point out where I voted for an application where the lawyer, be it Barry Kutun or otherwise, is with Broad & Cassel. But what is also interesting, and I think the record ought to reflect it because I think it does have some relationship to my integrity and to my relationship with Broad & Cassel, that probably about 1 month or 6 weeks ago, a similar situation, appli-

cation filed by Al Cardenas, who is is Broad & Cassel's zoning lawyer, their prime zoning lawyer, came before the commission and, just for the record—and the county records will clearly reflect this—I voted against the application. So I voted against the application because on its merits, I did not think it was worthy of passing. I voted against my friend Al Cardenas.

In that particular case, that was, indeed, a Broad & Cassel client, and I voted against a Broad & Cassel client. I think that is just as important as voting for, if you will, a Broad & Cassel client.

Senator EAGLETON. Well, that is fine. When the commission hears a zoning case and you say you hear it de novo, but you look at the previous record, don't you? Does the county attorney make the previous record before these various boards, bureaus, and commissions available to the commission?

Mr. SCHREIBER. We have, in our agenda, the recommendations of the building and zoning departments and the planning department.

Senator EAGLETON. And the zoning appeals board?

Mr. SCHREIBER. Yes, but since it's de novo, we really don't look at it.

Senator EAGLETON. It is there in the pile.

Mr. SCHREIBER. It is there; if we wish, certainly.

Senator EAGLETON. OK. When you are hearing it, you use the word de novo.

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. It is a legalistic type term and appropriate. You were then sitting in what might be referred to as a quasi-judicial capacity, are you not?

Mr. SCHREIBER. Exactly.

Senator EAGLETON. I agree exactly. The canon of ethics, which applies to individuals that sit in a judicial or quasi-judicial capacity, is that they shall not engage in an impropriety or give the appearance of impropriety. Are you aware of that?

Mr. SCHREIBER. Yes, sir.

Senator EAGLETON. Those famous words used, for instance, in the nomination of Clement Haynesworth, the Supreme Court nominee, the appearance of impropriety.

I ask you, Mr. Schreiber, you are sitting on that board in a de novo, quasi-judicial capacity hearing a zoning matter. You are of counsel, associate in Broad & Cassel, and there representing the developer is another of counsel associate of Broad & Cassel, your very next office mate. He sits closest to you as anybody in that law firm.

Mr. SCHREIBER. Physically.

Senator EAGLETON. Physically, the very next office mate, and you are voting to decide that matter. Does that not, I ask you, in all conscience, give the appearance of impropriety?

Mr. SCHREIBER. Once again, and indeed, this goes back to the initial relationship with Broad & Cassel, I asked Mr. Ginsburg what would my posture be if Broad & Cassel came before the commission, specifically, on zoning matters, and his response to me was, I had the right to vote on those issues provided I did not have a financial interest in it one way or the other.

As such, I have conducted myself since that time. Perception, indeed, is in the eye of the beholder, and I cannot argue with some-

one who may see it one way, as I would argue with someone who may see it another way.

Senator EAGLETON. How could those homeowners see it in any other way than this incestuous relationship, one of the quasi-judicial commissioners voting to decide their fate from the zoning point of view, and their opponent, the developer, represented by the guy who sits right next door to him in the law office?

Mr. SCHREIBER. Well, I would hope——

Senator EAGLETON. Do you think they have any right to conclude that that has the appearance of impropriety?

Mr. SCHREIBER. I can't answer for them, but I know that it would also be interesting to get the reaction from those homeowners on the Cardenas application, for whom I did vote, and supported their position, and I guess they are saying, "My goodness, Commissioner Schreiber really has great integrity, because he voted against one of the lawyers in his firm."

Senator EAGLETON. Was he right next door, too?

Mr. SCHREIBER. About four offices down, I think.

Senator EAGLETON. Four offices down.

I renew my motion now to insert into the record the three statutes, rules, cannons, and news articles.

Chairman ROTH. Without objection.

Senator EAGLETON. I would like to make a brief summary or would you like to make a brief summary?

Chairman ROTH. I will let you make yours.

Senator EAGLETON. Mr. Chairman, I would like to summarize the issues that concern me and concern me deeply about Mr. Schreiber's nomination to the Postal Service Board of Governors.

First, I believe him to be in conflict of interest when he serves as a county commissioner while at the same time being of counsel attorney with the Miami law firm of Broad & Cassel, where, in the most recent year, he was paid $115,000, the principal source of his income.

Broad & Cassel does business with the board of commissioners. That may be ethically acceptable for the Dade County Attorney's Office, but it is not the ethical standard that we look for in Federal appointees to this very important and prestigious position.

Second, Mr. Schreiber knew full well that Broad & Cassel would be seeking the contract to be bond counsel, one of the five bond counsels in Dade County. He knew it at least 10 months before the question was raised before the county commissioners.

A public official keenly sensitive to the issue of conflict of interest would have asked his law firm to give up its quest for bond counsel work. If the firm did not, then he should have resigned from it. Mr. Schreiber did neither. That shows me that he considers the conflict of interest issue to be of just minor importance.

Third, and in at least one instance, Mr. Schreiber voted to support the client of Broad & Cassel on a zoning issue before the board of commissioners, and where Broad & Cassel was represented by a Mr. Kutun, his next door neighbor, his immediate next door neighbor in the law firm.

Fourth, Broad & Cassel represented a firm known as Agripost, which was trying to win county approval of a $17 million industrial development bond issue. Mr. Schreiber voted in favor of the bond issue, and moreover, of course, Broad & Cassel had Agripost as one of its clients.

I should add that with respect to Broad & Cassel becoming bond counsel, the record is clear that Mr. Schreiber went around talking to people, always talking about, "Morgan, Lewis, for example"; "For example, Morgan, Lewis"; "For example, Morgan, Lewis," because he well knew that one of the five had to go.

Morgan & Lewis had to go before Broad & Cassel could get into the action.

By his own testimony, Mr. Schreiber was educated, "enlightened" when Morgan, Lewis low-balled his firm, low-balled his firm. Morgan, Lewis got an account; Broad & Cassel came in second. He got enlightened.

Fifth, in the above matters, Mr. Schreiber consistently is oblivious to the fact that he seems to be in a conflict of interest situation. And that may be his most serious flaw.

I point to the 1981 county attorney's assertion about a conflict of interest problem that would preclude a law firm from serving as bond counsel. That is his guideline.

I repeat, "A firm shall be disqualified from doing the company's bond work if a member of that firm is on the board or agency which either issues or has a significant role in the issuance of the bond."

Can that prohibition be made more clear? I don't think so. It is apparent to me that the award of the bond counsel contract to Broad & Cassel, while Mr. Schreiber served as a commissioner, was a conflict of interest, and obviously so.

That Mr. Schreiber disagrees speaks volumes about his sensitivity to this issue. In fact, Mr. Chairman, Mr. Schreiber is totally and completely, and I think unalterably insensitive to ethical issues. That seems to be his nature. That is his conduct from the record.

Finally, Mr. Chairman, Mr. Schreiber has serious legal and ethical problems in four major arenas: First, serving on the Postal Service Board of Governors and county commission seems to be in direct violation of the Florida constitution, and we could settle that one, I repeat, by calling on the opinion of the Florida Attorney General.

Second, the Florida State statutes on doing business with oneself in voting conflicts seem to prohibit the actions Mr. Schreiber took in both the bonding and the zoning cases.

Third, opinions issued by the Florida Ethics Commission, they have been put in the record, and by the Florida Bar Association, as well as the bar association's code of professional responsibility are on point with Mr. Schreiber's activities, and would prohibit such activities.

Fourth, while the county attorney seems to have found no conflict of interest pursuant to a multitude of county provisions governing conflict of interest, Mr. Schreiber's actions on the bonding issue are in direct conflict with the county's own guidelines for the selection of bond counsel.

Mr. Chairman, given these widespread legal and ethical issues, I think it would be prudent for Mr. Schreiber and, thus, a benefit to this committee, to seek advisory opinions on these various relationships from the State attorney general's office, and we will help him in that regard, if he so desires; the Florida State Ethics Commission, where he can go directly, and submit all of these factual situations for their evaluation; and the Florida State Bar.

I don't think, Mr. Chairman, we can just slough this off and say, "Well, we have got Ginsburg's letter of January 9, 1985 and that cures everything; that cures the Florida constitutional issue; that cures the Florida State Bar issue; that cures the Florida State Ethics Commission issue; that cures the guidelines issue; that Ginsburg becomes our substitute for judgment."

That is not our role.

Mr. Ginsburg is not a member of the U.S. Senate. We have our own independent judgment to make as to the qualifications and ethical behavior of this nominee. And we can't shirk from it, Mr. Chairman. We can't try to sweep it under the rug or try to ignore it away or to wish it away. That issue is abundantly before this committee. And we must address it, and we must cope with it, and we can't do a bail-out on it by just saying, "Good old Ginsburg proves this."

Good old Ginsburg isn't enough for a committee of the U.S. Senate.

Chairman ROTH. Let me just start out by saying the question before us, of course, is whether the nominee is qualified to serve. There may be many unsettled questions of State and local law, but their answers are not relevant to our inquiry. It is not relevant today whether tomorrow the Florida Supreme Court decides that a Governor of the postal board cannot hold a county commissionership. It is not relevant whether the county council has rendered a correct opinion, only that he has rendered an opinion on which the nominee reasonably relied.

As far as I am concerned, we are not here today to look into the propriety of the way Dade County does business or whether or not the code of ethics is appropriate or improper. The question is whether or not, as I said, Mr. Schreiber is qualified to serve on the U.S. Postal Service Board of Governors.

I think it is very interesting and worth repeating a letter that was submitted voluntarily by Claude Pepper, a Member of Congress, a pre-eminent and well-known Democrat who has been a Member of the House and a Member of the Senate. He says, "I know he would serve well and honorably and would, with his great talent, help maintain excellence in the Postal Service for our Nation during his tenure." Here we have a man who knows Mr. Schreiber well and who has served in the Congress long and honorably for many years. You can always spin a web, a web of conspiracy, if you so choose. You can always raise technicalities. But before we destroy a person's reputation, there should be hard evidence, and I find a lack of any hard evidence. One can, as Mr. Schreiber, I think, properly pointed out, view things differently, but in making the final decision, it should be based on fact and not supposition.

I am impressed by the fact that Claude Pepper wrote me the following, and I did not ask for this letter.

Commissioner Schreiber has very ably and with remarkable accomplishment served as a Commissioner of Dade County, Florida, my home county, since 1976. My experience with Barry precedes this period, as I knew him in earlier years, when he made a brilliant record in Dade County and the State of Florida as a lawyer. In addition, he has always shown an astute and genuine concern for the public interest.

He has been an outstanding leader in various civic and charitable organizations, such as the Greater Miami Jewish Federation, where he served as a board member, B'nai B'rith, the American Zionist Federation of South Florida, whose president he is, and the Dade League of Cities, where he serves as secretary. His awards, including an honorable doctorate in Human Letters from Heed University, Outstanding Young Man of America in 1977, the coveted and prestigious Yeshiva Technical University Heritage Award and the recent American Police Hall of Fame Honor Award are too numerous to list. They testify to the duration and the depth of his public commitment.

Your favorable consideration of him would be very much appreciated by me. I know he would serve well and honorably and would, with his great talent, help maintain excellence in the Postal Service for our Nation during his tenure.

Thank you, Mr. Schreiber, for being here today, and for being patient, as part of the process for both sides to have freedom to question and to find out the truth. I appreciate the patience of your family and children being here through what in many ways must be a difficult day. I intend to move forward with the nomination, and each Senator will then have to vote his conscience.

Senator EAGLETON. May I ask a procedural question of the Chair before we conclude? I have just signed what is known in the trade around here as a poll letter, polling out the nominations of Mr. McConnell and Mr. Setrakian. Polling means that we verbally agree to report them out, and I urge the chairman to try to talk with the majority leader tomorrow and see that those two, McConnell and Setrakian, can be confirmed before the Senate recesses for Christmas.

As the chairman knows, I have not given my agreement, and will not give my agreement on a poll on Mr. Schreiber, and will request that at such time as he wishes to bring it before the committee, that it be for a full committee debate, an extensive committee debate to present the issues that this case presents.

I think we will have some other legal information by then, at the very least, the opinion of the attorney general of Florida. I intend that this matter be pursued with full debate at every juncture. I categorically and unqualifiedly am of the opinion that Mr. Schreiber should never serve on the Postal Service Board of Governors under any circumstances.

Chairman ROTH. We shall proceed to hold the meeting of the full committee at the earliest possible date. The good Senator from Missouri will certainly have the opportunity to state his case, but I would hope that all would agree that both the committee and the full Senate should expeditiously have the opportunity to vote their conscience and we shall proceed in the belief that that is the desire.

[Biographical information and responses to prehearing questions submitted by Mr. Schreiber follow:]

SSHZZ1-SS-4631

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED BY NOMINEES

A. BIOGRAPHICAL INFORMATION

1. NAME: Barry D. Schreiber, a/k/a Barry Dov Schreiber

2. POSITION TO WHICH NOMINATED: Board of Governors, U.S. Postal Service

3. DATE OF NOMINATION: October 7, 1985

4. ADDRESS: Residence: 1390 N.E. 173rd St.,North Miami Beach, Fl. 33162
Offices: Metro-Dade Center, 111 N.W. 1st St., Suite 220
Miami, Fl. 33128

Broad & Cassel, Attorneys at Law
1108 Kane Concourse, Bay Harbor Island, Fl.33154

Schreiber & Steinberg
14 N.E. 1st Avenue, Miami, Fl. 33132

5. DATE OF BIRTH: April 17, 1943

6. MARITAL STATUS: Wife: Barbara Ann Post Schreiber

7. NAMES & AGES OF CHILDREN:

Lisa Esther Schreiber	age 17
Adam Joseph Schreiber	age 15
Jonathan Nachum Schreiber	age 11

8. EDUCATION:

Name of School	From	To	Degrees:
University of Miami School of Bus.Admin. Miami,Fl.	10/71	5/72	None
University of Maryland School of Law Baltimore,Md.	1964	1967	JD
Yeshiva College 500 West 186th St. New York,N.Y.	1960	1964	BA
Teachers Institute of Yeshiva University 500 W. 186th St. New York,N.Y.	1960	1964	None
Yeshiva University High School, N.Y.C.,N.Y.	1958	1960	High School Diploma
Talmudical Academy of Baltimore, Md.	1956	1958	
Talmudical Academy of Baltimore,Md.	1954	1956	Jr.High School Diploma

SS# 227-58-4630

SUBJECT: A. BIOGRAPHICAL INFORMATION (Continued)

9. EMPLOYMENT RECORD:

From	To	Name & Address of Employer	Title or Description of Work
May '83	present	Barry D. Schreiber,P.A. w/ Broad & Cassel 1108 Kane Concourse Bay Harbor Islands, Fla.	Of Counsel to Law Firm
May '81	May '83	Barry D. Schreiber, P.A. Wellisch & Metzger 161 Almeria Ave., Coral Gables, Fl.	Of Counsel to Law Firm
Aug.'80	May '81	Barry D. Schreiber, P.A. 14 N.E. 1st Ave., Miami, Fla.	Law Firm
Jan.'78	present	Schreiber & Steinberg 14 N.E. 1st Avenue Miami, Fl.	Law Firm
Jan.'79	Aug.'80	Schreiber,Lechtman,Certo,Steinberg 801 N.E. 167th Street North Miami Beach, Fl.	Law Practice
Oct.'76	present	Metro-Dade Center, Suite 220 111 N.W.1st St., Miami, Fl.	Dade County Commissioner
June '76	Dec.'78	Barry D. Schreiber, Attorney 801 N.E. 167th St., No.Miami Beach, Fl.	Law Practice
Jan.72	Apr.'76	Breger & Schreiber 16499 N.E.19th Ave. No.Miami Beach,Fl.	Law Practice
June'70	Mar.'71	Richard & Gross 605 Lincoln Road Miami Beach, Fl.	Law Practice
Jan.'70	June '70	R & H Associates 16499 N.E. 19th Ave. No.Miami Beach, Fl.	Employment Service
Mar.'70	May '70	Mattaway Shoe Co. 510 Perrine Ave.,Perrine, Fl.	Shoe Sales
July '69	Dec.'69	Jackson Byrons P.O. Box 3620,Norland Br., Miami, Fl.	Personnel Admin.

SUBJECT: A. BIOGRAPHICAL INFORMATION (Continued)

9. EMPLOYMENT RECORD (Continued)

From	To	Name & Address of Employer	Title or Description of Work
June '67	June '69	Stewart & Co. Howard & Lexington Sts., Baltimore, Md.	Personnel Management
Summer '66		Southland Wine Company 421 N.17th St.,Richmond,Va.	Family winery
Sept.'66	June '68	Baltimore Hebrew Congregation 7401 Park Heights Ave., Baltimore,Md.	Hebrew Teacher
Sept.'65	June '66	Bd.of Jewish Ed. Baltimore City,7408 Park Heights Ave. Baltimore,Md.	Hebrew Teacher
June '65	Sept.'65	Beth Tfiloh 300 Old Court Rd., Baltimore,Md.	Hebrew Teacher
Summer '65		Merit Protection Services of Baltimore,Md. 128 E. Lexington St. Baltimore,Md.	Protective shopper

10. GOVERNMENT EXPERIENCE:

Appointment, 1979	Special Advisor to the Governor of the State of Florida - Immigration & refugee affairs

11. BUSINESS RELATIONSHIPS

Name	Position
Barry D. Schreiber,P.A.	Officer, Owner & Director Professional Corporation for the practice of law
Schreiber & Steinberg	Partnership for practice of immigration law
Universal National Bank	On the Board of Directors
Point East Holdings	1/7 interest in real property

12. MEMBERSHIPS

Name & Address	Type	From	To	Office
American Zionist Fedn. of So.Fla.,Miami Beach,Fl.	Philanthropic	11/82	3/85	President
Dade League of Cities 7480 Fairway Drive Miami Lakes, Florida	Quasi Political	6/84	present	Secretary

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A. BIOGRAPHICAL INFORMATION (Continued)

12. MEMBERSHIPS (Continued)

Name & Address	Type	From	To	Office
Herut Zionists of America New York,N.Y.	Philanthropic	1978	1985	Member,Bd.of Directors
State Assn.of County Commissioners P.O. Box 549 Tallahassee, Fl.	Quasi political	1984	present	Member, Bd.of Directors
Fl. League of Cities P.O.Box 1757 Tallahassee, Fl.	Quasi political	1983	present	Member, Bd.of Directors
S.E.Fla.Holocaust Memorial Center,F.I.U.Trade Center No.Miami, Fl.	Holocaust Memorial	1980	present	Board of Directors
Professional Film & Video Assn.,P.O.Box 610124 Miami,Fl.	Promotional	1983	present	Member
Greater Miami Jewish Fedn. 4200 Biscayne Blvd. Miami,Fl.	Philanthropic	1976	present	Past member,Board of Directors
So.Fla.Conf.on Soviet Jewry 4200 Biscayne Blvd. Miami, Fl.	Philanthropic	1978	present	Member
Golden Glades Masonic Lodge North Miami Beach, Fl.	Fraternal	1982	present	Member

13. POLITICAL AFFILIATIONS AND ACTIVITIES:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Formerly a member of the Board of Directors, North Dade Democratic Club, North Miami Beach,Fl.,1981-83. Presently an honorary member of the Board.

In 1976 ran for member, Board of County Commissioners, Dade County,Fl. Elected. Ran for re-election 1978,1982 - re-elected.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

In 1978 was alternate delegate to Democratic National Convention in New York.

In 1980 chaired "Jews for Reagan", Dade County,Fla.

In 1974 Co-chaired Henry Jackson Presidential campaign, Dade County,Fl.

In 1984 Co-chaired National Jewish Coalition in Florida for re-election

A. BIOGRAPHICAL INFORMATION (Continued)

13. POLITICAL AFFILIATIONS AND ACTIVITIES:

(b) Continued:

of President Reagan.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

1/25/82	Congressman Tom Lantos	$100
10/3/83	Mayor Malcolm Fromberg	$500

(My records do not go back more than 6 years. To the best of my recollection, there have been no other such contributions.)

14. HONORS AND AWARDS:

List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.
1984: Yeshiva College Alumni Community Service Leadership Award; Yeshiva University Heritage Award; American Police Hall of Fame Honor Award; Reubin Askew Urban League Award. 1983: Honorary Fellowship Bar-Ilan University;Honoree, Toras Emes Academy; Young Israel of Greater Miami. 1981: Humanitarian Award, Fl.Council American Mizrachi Women; State of Israel Bond Scroll of Honor. 1979: Chief Rabbi Herzog Gold Medal Award-Religious Zionists of America. 1978:David Ben Gurian Award. 1977: Outstanding Young Man of America. 1976: Shofar Award, National Council of Young Israel. 1974: Amudim Award National Society of Hebrew Day Schools. 1973: Honorary Doctorate Humane Letters, Heed University.

15. PUBLISHED WRITINGS: None

16. SPEECHES: None

17. SELECTION:

(a) Do you know why you were chosen for this nomination by the President?

Was recommended by Senator Paula Hawkins; Tommy Thomas, Chairman, Florida Republican Party; Jeb Bush, Dade County Republican Party , and my efforts on behalf of President Reagan in 1980 and in 1984.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My background in business administration, law and having served 9 years on the Board of County Commissioners of Dade County, Florida, has given me the ability to work with billion dollar budgets, and personnel, in business and in the political arena.

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B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   No. It is not necessary since the Board of Governors of the Postal Service is part time.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government?

   I will continue my present employment as outlined above.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   Same response as #2.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes, full term.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

   Will continue of Counsel relationship with Broad & Cassel for the practice of law, and with Schreiber & Steinberg for the practice of law. No contractual arrangements exist except on a year to year basis.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   None

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None

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C. POTENTIAL CONFLICTS OF INTEREST (Continued)

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

   As an elected official for Dade County, Florida, for the past 9 years, I have at times lobbied the state government for legislation favorable to Dade County. So too have expressed viewsto Florida Congressional representatives relative to legislation effecting Dade County, Fl.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

   There are no potential conflicts of interest of which I am aware.

6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes, if required.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group?

   Yes. The Florida Bar filed a complaint in 1979 for direct mail advertising. Complaint was ultimately dismissed by the Florida Supreme Court (see Florida Bar v. Barry Schreiber 420 So.2d 599), see attached. I was fully vindicated. The U.S. Supreme Court ruled in favor of direct mail advertising and as such the complaint against me was constitutionally protected.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, County or municipal law, regulation or ordinance, other than a minor traffic offense.

   No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any way administrative agency proceeding or civil litigation?

   No.

4. Have you ever been convicted of any criminal violation other than a minor traffic offense?

   No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   None

The publication of this order in *Southern Reporter* shall serve as Respondent's public reprimand.

Costs in the amount of $306.00 are hereby taxed against the Respondent.

It is so ordered.

ALDERMAN, C.J., and ADKINS, BOYD, OVERTON and EHRLICH, JJ., concur.

THE FLORIDA BAR, Complainant,

v.

Barry SCHREIBER, Respondent.

No. 59946.

Supreme Court of Florida.

Oct. 21, 1982.

Original Proceedings—The Florida Bar.

John F. Harkness, Jr., Executive Director, Stanley A. Spring, Staff Counsel, Tallahassee, Paul A. Gross, Bar Counsel, Miami, and Sylvia H. Walbolt of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Tampa, for complainant.

Burton Young and Glen Rafkin of Young, Stern & Tannenbaum, North Miami Beach, for respondent.

Christopher H. Marine, Gainesville, as amicus curiae.

ON MOTION FOR EXTRAORDINARY RECONSIDERATION

OVERTON, Justice:

This cause, concerning direct-mail advertising by lawyers, is before the Court upon respondent Schreiber's motion for extraordinary reconsideration. Respondent asserts that our opinion in this matter, *The Florida Bar v. Schreiber*, 407 So.2d 595 (Fla.1981), should be vacated in light of the United States Supreme Court's subsequently-filed decision in *In re R.M.J.*, U.S. , 102 S.Ct. 929, 71 L.Ed.2d 64 (1982). The Florida Bar, as complainant, joins respondent, agreeing that the instant cause is controlled by *In re R.M.J.* The bar requests guidance in matters of lawyer direct-mail solicitation.

We grant the motion, withdraw our opinion dated October 22, 1981, and affirm the referee's dismissal of the cause. We direct The Florida Bar to submit proposed rules on or before February 1, 1983, for the regulation of lawyer direct-mail advertising which are reasonable and necessary to protect the public interests and which conform to the dictates of *In re R.M.J.*

It is so ordered.

ADKINS, BOYD, and OVERTON, JJ., concur.

EHRLICH, J., concurs with an opinion.

McDONALD, J., dissents with an opinion with which ALDERMAN, C.J., concurs.

NO MOTION FOR REHEARING WILL BE ALLOWED.

EHRLICH, Justice, concurring.

I concur in the judgment of the Court and join in the Court's opinion with great reluctance and much sadness. My reluctance stems from the fact that I find it difficult not to stand by the original opinion in this case of former Chief Justice Sundberg which shall remain as a beacon of what the law is, in the opinion of some, or what it ought to be, in the opinion of others. My sadness emanates from my realization that we are leaving an era of professionalism in the practice of law which has well served our profession and the public most of this century, and are now embarked on a course of continued commercialization of the legal profession under the guise of first amendment rights, mandated by the highest court in this land, where direct mail solicitation apparently cannot be proscribed. We are told, however, that it can be regulated by the state in fulfillment of the state's obligation to uphold professional standards for the protection of its citizens.

I am certain that this Court will lend its every effort to this endeavor, to the end that the public be fully protected, that the practice of law not become a commercial enterprise, and that professionalism may yet survive.

McDONALD, Justice, dissenting.

Try as I may, I cannot reconcile myself to believing that our decision in this cause should be disturbed because of the subsequent pronouncement in *In re R.M.J.*, — U.S. —, 102 S.Ct. 929, 71 L.Ed.2d 64 (1982). First of all, our opinion was final. But more importantly, I look at *R.M.J.* in a more restricted light than do The Florida Bar and my colleagues. I recognize that *R.M.J.* prohibits restrictive limitations on the audience to whom a lawyer may direct announcements and probably prevents a prohibition against the use of mail for advertising. But a direct mail solicitation to a particular person, group, or class of persons seeking employment of the lawyer is different. Again I reiterate what Justice Sundberg said in our original opinion, that solicitation and advertising are not synonymous. While advertising may not be prohibited,[1] solicitation can be.[2]

This might be considered a solicitation case. The letter mailed in this instance was an invitation directed to a particular organization to employ the letter writer in any immigration problems that might arise. While that is not as egregious as a lawyer seeking representation in a particular case, it could be considered more than simple advertising.[3] Disciplinary Rule 2-103(A) still has applicability in some instances. It is still alive as it relates to solicitation. Our original opinion should stand.

ALDERMAN, C.J., concurs.

1. *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977).

2. *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 98 S.Ct. 1925, 56 L.Ed.2d 444 (1978).

3. I say could because it must be remembered that the matter was here on a motion to dismiss and no fact finding hearing has been held.

SS#227-48-4630

E. FINANCIAL DATA

Submitted as a separate package.

AFFIDAVIT

Barry D. Schreiber being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate, and complete.

Subscribed and sworn before me this 18th day of October, 1985.

Notary Public

Notary Public, State of Florida
My Commission Expires April 3, 1987
Bonded Thru Troy Fain - Insurance, Inc.

NAME: Barry D. Schreiber SS#227-58-4630

SUPPLEMENT TO:

A. BIOGRAPHICAL INFORMATION

12. MEMBERSHIPS

Name & Address	Type	From	To	Office
Herut Zionist of So.Fla. Miami Beach,Fl.	Philanthropic Social	1979	1985	President
Yeshiva University Alumni Association New York City	Social Charitable	1981	present	none
Young Israel of Greater Miami, Miami,Florida	Religious	1969	present	Pres.1971-73 Pres.1975-76
Sharay T'Filah No.Miami Beach,Fl.	Religious	1979	present	Member
Amer.Committee for Sharay Tzedek Hospital Miami,Fl.	Charitable	1980	present	Member
Elephant Forum Miami,Fl.	Republican Political Forum	1980	present	Member
Tiger Bay Club Miami,Fl.	Democratic Political Forum	1977	present	Bd.of Directors
Optimist Club of North Miami Beach	Charitable	1979	present	Member
American Federation of Senior Citizens Miami, Florida	Social Quasi Political	1978	present	Member
Voters,Inc. Miami Beach,Fl.	Social Political Forum	1976	present	Member
Democratic Club of Miami Beach Miami Beach, Fl.	Social Political	1976	present	Member
Amer.-Israel Chamber of Commerce Miami,Fla.	Economic	1977	Club no longer in existence	
No.Dade Chamber of Commerce Miami,Fla.	Economic Social	1977	present	Member
Democratic Club of No. Dade,No.Miami Bch,Fl.	Social Political	1980	present	Member
New Democratic Club No.Miami Beach,Fl.	Social Political	1983	present	Member

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SUPPLEMENT TO:

A. BIOGRAPHICAL INFORMATION (Continued)

12. MEMBERSHIPS (Continued)

Name & Address	Type	From	To	Office
Bay Vista Democratic Club Bay Harbor Islands, Fl.	Social Political	1984	present	Member
No.Dade Bar Association Miami, Fla.	Social Legal	1973	present	Member
Jewish Historical Society Miami,Fl.	Historical Social	1978	present	Member
No.Miami Beach Property Owners Association No.Miami Beach, Fl.	Homeowners Social	1978	present	Member
B'nai B'rith Miami, Fla.	Ethnic Social Charitable	1978	present	Member
B'nai Zion Hallandale, Fla.	Social	1980	present	Honorary V.P.
Anti-Defamation League of B'nai B'rith Miami, Fla.	Civic	1980	present	Regional Bd. of Directors
Jockey Club No.Miami,Fl.	Social	1982	present	Member
Turnberry Country Club No.Miami Beach,Fl.	Social	1982	present	Member
Hillel Day School No.Miami Beach,Fl.	Educational	1978	present	Board of Trustees
Common Cause Miami, Fl.	Civic Political	1983	1984	Member
Miami Accacia Club Miami, Fla.	Masonic	1982	present	Member

The above supplements the original list submitted. The original list was taken from the most current biographical sketch. Many organizational memberships were, therefore,inadvertently omitted as they were not listed on the most current biographical sketch. I have attempted now to list all organizational memberships. There still may be some that have been omitted. If so, I have not been involved or active with them over the past four or five years.

PRE-HEARING QUESTIONS AND RESPONSES
FOR BARRY D. SCHREIBER

1. Nomination Process and Potential Conflicts

Question 1

Were any conditions, expressed or implied, attached to your nomination to be a Governor of the United States Postal Service? No.

Question 2

What commitments have you made with respect to the policies and programs you will attempt to implement as a Member of the Board of Governors? None.

Question 3

Are there any issues involving the Postal Service from which you may have to disqualify yourself? None that I am aware of.

Question 4

Did you actively seek this nomination? No. However, I did express a desire to the Reagan Administration to serve on a Board, or in some capacity for which they felt me to be qualified.

Question 5

Why do you feel you are qualified to be a member of the Board of Governors and what contribution do you feel you can make to the Postal Service as a member of the Board? My extensive background in government including over nine years as County Commissioner in Dade County, Florida (the largest Home Rule Chartered County in the U.S.), has given me the necessary tools to meet the challenges of the postal system. I have worked with annual budgets in excess of One Billion Dollars I know how to deal with a county manager form of government (similar to the relationship the Board of Governors has with the Postmaster General). I also am a lawyer and possess background in business administration.

I hope to be able to contribute the above expertise to the Board of Governors along with a greater sensitivity to the political aspects of the postal system, as it relates to Congress and to the public.

II. Responsibilities of the Board of Governors

Question 1

What is your view of the role of the Board of Governors of the Postal Service? What do you believe are its most important functions and responsibilities?

The role of Board of Governors of the Postal Service is similar to the role played by the Board of a private sector corporation. That is, to set the overall policies, financial practices, business and marketing goals to ensure an efficient and cost effective operation for the stockholders. But in addition, the Board of Governors must carry out these responsibilities in light of the Postal Reorganization Act of 1970, while being sensitive to Congress and to the general public.

II. Responsibilities of the Board of Governors (Continued)

Question 2

How do you view the relationship of the Board of Governors to the Postal Service and, specifically, to the Postmaster General?

The Postmaster General is to the Board of Governors what a President of a Company is to the Board of Directors. As its chief executive officer, the Postmaster General carries out the policies and practices set by the Board. The Board looks to the Postmaster General to administer the service and fulfill the daily management activities. Although a team effort, the Board is ultimately responsible for the actions, successes and failures of the Postmaster General.

Question 3

How do you view the relationship and responsibilities of the Board of Governors to the President, the public, and the Congress?

The Board of Governors is part of the executive branch of the government, and is charged with the responsibility to direct the operation of the service to the best of its ability and judgment. Ultimate responsibility is to the public. The Board must consider the President's views and opinions and be ever mindful and sensitive to the concerns expressed by Congress.

III. Postal Reorganization

Question 1

Various proposals have been made to increase the accountability of the Postal Service to the Congress including Presidential appointments of the Postmaster General or the Chairman of the Board of Governors. How do you feel about these proposals?

If the Board of Governors lost its ability to hire and fire the Postmaster General the Board's role would become advisory if not of little value. The Board must be accountable to Congress and to the President. Presidential appointment of the Chairman would appear to be of little significance as it relates to accountability.

Question 2

The Postal Rate Commission is a unique regulatory agency in that it does not have final decision-making responsibility with respect to most matters brought before it. As you know, this responsibility rests with the Board of Governors of the Postal Service. Do you believe that this arrangement should be maintained? If so, why?

Until such time as I have had an opportunity to experience first hand, over a period of time, the interrelationship between the Board and the Postal Rate Commission, I would support the status quo. I am always mindful of eliminating duplication of efforts. I do support having responsibility and the ability to perform under one jurisdiction.

III. Postal Reorganization (Continued)

Question 3

Would you recommend any changes in the role and responsibilities of either the Postal Rate Commission or the Board of Governors?

It would be premature for me to make such a recommendation at this time.

IV. Postal Service Operations

Question 1

To what extent do you view the Postal Service as a public service appropriately financed out the the United States Treasury?

The Postal Service has the ability and ultimately should be self supporting. It is a public service but need not rely on congressional appropriations. But, where Congress mandates certain policies or where by tradition certain services have been required and are not self supporting - Congress should subsidize the service in these areas.

V. Relations With Congress

Question 1

What suggestions do you have for strengthening the relationship of the Board of Governors to the Congress. Do you believe that this is necessary?

There must be a strong relationship between the Board and Congress. There must be ongoing communication and sensitivity by the Board to the pressures brought to bear on Congress. At the present time I have no specifics as to how to strengthen such a relationship.

Question 2

Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted Committee of the Congress?

Yes, I do without any reservations.

Chairman ROTH. The committee is in recess.

[Whereupon, at 3:05 p.m., the committee was recessed, to reconvene subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

FLORIDA STATUTES

STATUTE 112.312

Definitions.—As used in this part and for purposes of full and public disclosure under the provisions of s. 8, Art. II of the State Constitution, unless the context otherwise requires:

(1) * * *

* * * * * * *

(2) "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

* * * * * * *

STATUTE 112.313

(1) * * *

* * * * * * *

(7) Conflicting employment or contractual relationship.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

* * * * * * *

STATUTE 112.3143

Voting Conflicts.—(1) * * *

* * * * * * *

(3) No county, municipal, or other local public officer shall vote in his official capacity upon any measure which inures to his special private gain or shall knowingly vote in his official capacity upon any measure which inures to the special gain of any principal, other than an agency as defined in s. 112.312(2), by whom he is retained. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357 or an officer of an independent special tax district elected on a one-acre, one-vote basis is not prohibited from voting.

* * * * * * *

STATUTE 839.10

No officer or board to bid for public work.—No state or county officer nor member of any state or county board shall bid for, or enter into, or be in any manner interested in any contract for public work for which the said officer or state or county board is or may be a party to the letting. Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083; provided, that no member of any board aforesaid who shall have recorded his vote against the letting of such contract, or who shall have been absent at the taking of the vote thereon, shall be convicted of a violation of this section.

FLORIDA COMMISSION ON ETHICS

CEO 82-53—JULY 29, 1982

VOTING CONFLICT OF INTEREST

CITY COUNCILMAN VOTING ON REZONING OF PROPERTY SOLD BY REAL ESTATE FIRM WHICH EMPLOYS HIM

To: Mr. Michael Altes, Assistant Counsel, City of Jacksonville

Summary: A voting conflict of interest is created under Section 112.3143, Florida Statutes, where a city council member votes on the rezoning of property which is being sold by associates of a real estate firm with which he is associated. CEO 76-151 and Complaint No. 79-11, In re Jack C. Ganstine, are referenced as precedent. Therefore, if the subject councilman should vote on rezoning under these circumstances, he should file a Memorandum of Voting Conflict, CE Form 4, in accordance with Section 112.3143. As an alternative, he may abstain from voting as permitted by Section 286.012, Florida Statutes.

Question: Is a voting conflict of interest created where a city council member votes on the rezoning of property which is being sold by associates of a real estate firm with which he is associated?

Your question is answered in the affirmative.

In your letter of inquiry and in a telephone conversation with our staff you advise that Mr. Forrest Boone, a member of the Jacksonville City Council, is a licensed real estate broker associated with a real estate agency run by another broker. You also advise that the agency has contracted with a number of brokers and salesmen under which contracts their agency pays the office and business expenses in return for a percentage of the broker/salesmen's sales commissions. Each broker/salesman pays his own non-office expenses, and does not share or split sales commissions with

other broker/salesmen except as they normally would with any other broker in the community.

Occasionally, you advise, a real estate contract provides that the sale will not be consummated unless the subject property is rezoned to a specified zoning category. Other broker/salesmen associated with the agency with which the Councilman is associated would have a financial interest in the property being rezoned, as their commissions would be conditioned on the consummation of the sale. You question whether the Councilman is required to file a Memorandum of Voting Conflict following his vote on bills rezoning property, the sale of which would financially benefit other broker/salesmen in the same real estate agency.

In a previous opinion, CEO 76-151, we found that a voting conflict of interest would be created under Section 112.3143, Florida Statutes, were a planning commission member to vote on a zoning change request involving property which was represented by the realty corporation with which he was associated. Similarly, in Complaint No. 79-11, In re Jack C. Ganstine, final order entered January 18, 1980, we found that a voting conflict of interest had been created under Section 112.3143, Florida Statutes, where a city council member voted on the opening of streets within a subdivision which was being sold by the realty firm with which he was associated as a salesman, although the council member stood to gain no commission from the sale of the property.

Accordingly, we find that under Section 112.3143, Florida Statutes, the subject Councilman should file a Memorandum of Voting Conflict (Commission on Ethics Form 4) if he votes on the rezoning of property which is being sold by an associate of the real estate firm with which he is associated. As an alternative to voting, the Councilman may abstain as permitted by Section 286.012, Florida Statutes.

RENDERED by the State of Florida Commission on Ethics this 4th day of August, 1982.

WILLIAM O'NEIL III, *Chairman.*

FLORIDA BAR OPINION 74-8

JUNE 14, 1974

It is improper for a lawyer to represent a client in a suit against a hospital when a member of the lawyer's firm is also a member of the commission of the hospital district in which the defendant hospital is located.

Canon: 9, C.P.R.

C.P.R.: DR 5-105(D); EC 8-8, 9-2

Vice Chairman Sullivan stated the opinion of the Committee:

A member of The Florida Bar is a member of the Commission for a Hospital District. The Commissioners meet monthly to determine overall policy but do not participate in the day-to-day operation of any hospitals in the District. A Commissioner's duties and responsibilities are in some ways analogous to those of a member of the Board of Directors of a corporation.

A regular client of the Commissioner-attorney's firm intends to sue a hospital in the District for malpractice arising out of allegedly negligent treatment in the emergency room. The proposed lawsuit will not involve any acts or decisions of the Commission or of any Commissioner. The hospital has malpractice insurance which will fully cover any damages that may be recovered, and the insurance company will have complete control of the lawsuit. The Commission will make no decisions regarding the handling of the litigation; there is no confidential information that could or would be made available to the law firm because one of its members is on the Commission.

Another member of the firm asks whether his partner's membership on the Commission presents a conflict of interest that will prevent his firm's representing the client in the malpractice action. We are of the opinion that a conflict of interest does exist and that such representation would be improper.

We note that questions could arise regarding the insurance coverage, including solvency of the insurer or a claim of non-cooperation, even though there is no question about coverage of the risk and policy limits. Even if those problems do not arise, the fact that the hospital has malpractice insurance does not necessarily isolate the Commissioners from any responsibility or involvement. Certainly, a substantial recovery by the plaintiff would raise the question of the hospital's insurance rates and result in publicity adversely affecting the hospital's reputation.

The attorney's Commissioner-partner could, then, have a direct interest arising from his responsibilities to the Hospital District as well as the obvious interest in

his law firm's fee. The Commissioner should not represent the client in such an action, EC 8-8. Therefore, his partner should not. DR 5-105(D).

The fact that the Commissioner's law firm is suing a hospital in the District over which the Commission has policy-making and supervisory responsibility will subject it to suspicion and criticism even though the firm handles the case with complete propriety, as we assume it would. We believe, then, that at a minimum the law firm's participation in the case would create an appearance of impropriety which precludes its accepting the representation. Canon 9, EC 9-2.

FLORIDA CODE OF PROFESSIONAL RESPONSIBILITY

CANON 8

A Lawyer Should Assist in Improving the Legal System

* * * * * * *

DR 8-101. Action as a Public Official

(A) A lawyer who holds public office shall not:

(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

(3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

* * * * * * *

CANON 9

A Lawyer Should Avoid Even the Appearance of Professional Impropriety

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[From the Miami Herald, Dec. 7, 1985]

DADE HIRES LAWYERS LINKED TO SCHREIBER

(By Neil Brown)

Metro commissioners have dumped one law firm that does its lucrative bond work in favor of one that pays Commissioner Barry Schreiber a salary to do public relations and generate business.

Schreiber said Friday that he played no part in firing the firm of Morgan Lewis & Bockius, which was dumped in favor of Broad & Cassel, a firm Schreiber has worked for since 1983.

Schreiber left the commission chambers and didn't vote Nov. 21 when commissioners made the decision. He said he did not participate because he feared some would perceive that he had a conflict of interest.

But Schreiber, a lawyer, said there is no conflict in his working for Broad & Cassel while they work for the county.

"I will not receive any financial gain whatsoever from this," Schreiber said. "I will not vote on any matters that could be perceived as such. I had nothing to do with it."

The county's conflict of interest ordinance prohibits commissioners from having a "direct or indirect" financial interest in companies doing business with the county.

Because Schreiber only receives a salary and does not share in the profits of the firm, he is not in violation of the ordinance, assistant county attorney Murray Greenberg said Friday.

"There was not a conflict of interest. He is not a partner or an associate. He doesn't share in the profits and losses of the firm," he said.

Schreiber refused to say how much he is paid by Broad and Cassel, saying that the information is part of his financial disclosure.

Dorothy Glisson, director of the State Division of Elections, said Schreiber's disclosure forms don't specify how much of his income is from Broad & Cassel. The latest forms, filed in June, show Schreiber's combined income from Broad and Cassel and his own law practice was $188,000, she said.

Broad and Cassel provides Schreiber with an office and a secretary. His association is known as "of counsel" with the firm. He said much of the legal work required by his own clients is performed by Broad and Cassel.

Norman Broad, senior partner in the firm, said Schreiber was never consulted about the firm's attempt to become a county bond counsel and Schreiber attended no meetings in which it was discussed.

He said the firm sought the county as a client because the work is profitable and prestigious. He said his firm will be affiliated with the New York bond firm of Mudge, Rose, Guthrie and Alexander, a widely respected bond counsel.

But Richard Pettigrew, the county's Democratic Party Chairman and a member of Morgan Lewis, said there is a "blatant conflict of interest." The general well-being of Broad and Cassel affects the well-being of Schreiber, he said.

Metro Commissioner James Redford led the fight to dump Morgan Lewis. And he proposed hiring Broad & Cassel. Redford said political consultant Eston Melton lobbied him on behalf of Broad & Cassel. Broad said Melton was not paid. He contacted Redford as a favor to Broad.

Redford had three reasons for firing Morgan Lewis:

He was dissatisfied with the way the firm handled a proposed $17 million bond issue to help a company called Agripost build a plant to convert garbage to compost soil. Redford said Morgan Lewis failed to give a clear opinion on whether the bonds should be issued. The bond issue was later scrapped when problems were discovered with the potential toxicity of the compost. Pettigrew said the firm advised against the bond issue and Redford was mad because Redford didn't agree with the advice.

Redford was angered that Morgan Lewis represented the city of Miami Beach during it's negotiations with the county about financing and operating the Miami Beach Convention Center. He said the firm gave business advice instead of legal advice. Pettigrew said Morgan Lewis was simply serving its client—Miami Beach.

The county's four other local bond counsels are each affiliated with nationally known bond attorneys. Morgan Lewis, which employs 35 lawyers in Miami, is already part of a Philadelphia-based firm with bond expertise. Redford said he believes the county may be missing the extra help of an independent national firm when it uses Morgan Lewis. Morgan Lewis partner Paul Levine said his firm is able to avoid duplication—saving the county money—because it is a national firm.

Commissioners Redford, Clara Oesterle, Sherman Winn, Barbara Carey and George Valdes voted to dump Morgan Lewis in favor of Broad & Cassel. Beverly Phillips voted no and Harvey Ruvin, Schreiber and Mayor Steve Clark were absent.

Assistant county attorney Greenberg said he had no problem with Morgan Lewis: "They were a very professional firm."

In fact, three weeks before the commissioners fired Morgan Lewis, they gave the firm 16 more bond projects to work on.

The bond counsel business is lucrative. Since Morgan Lewis was hired in 1982, it has been paid $288,500 in fees—the lowest amount of the five firms used by the county.

County policy only allows five local bond counsels to work for the county. Lawyers and politicians have bickered for years over the work, which has generally gone to influential firms that make large campaign contributions.

"We're big boys. We're not cry-babies," said Levine of Morgan Lewis. "The political reality was that Broad and Cassel was going to get on that list."

Schreiber replied: "They fell from grace because of the caliber of work they gave the county."

[From the Miami Herald, Dec. 13, 1985]

Schreiber's Votes Helped His Firm's Clients

(By Neil Brown and Celia W. Dugger)

On two occasions in two years, Metro Commissioner Barry Schreiber cast votes that benefited clients of the law firm that pays him an annual salary.

Records show that on Nov. 1, 1983, and on Oct. 3, 1985, he voted to grant requests made by clients of Broad and Cassel, a firm that hired him May 1, 1983, to generate business and do public relations for the firm. The firm has provided him with an

office, secretary and a yearly salary as part of the arrangement. In both cases, Schreiber voted with the majority.

Schreiber will be questioned about those two votes today by the Senate Governmental Affairs Committee, which is considering his nomination to the U.S. Postal Service Board of Governors.

"I had no financial interest in the outcome of those cases. I did not share in the fees," Schreiber said Thursday. "I had a right to participate and vote, so I did. My vote was based solely on the issues."

In the first instance, Schreiber voted for a plan to issue $17 million in tax-free bonds to finance a plant where garbage was to be transformed into fertilizer. Broad and Cassel represented Agripost, the company seeking the bonds to build the plant.

The second time, Schreiber cast his ballot for the developer of Scott Estate Homes, who wanted permission to build 53 homes on property zoned for 38. The rezoning passed, 4-2. The developer was represented by Barry Kutun, a lawyer with Broad and Cassel.

Schreiber said he voted on the two matters because County Attorney Robert Ginsburg told him there is no conflict of interest since Schreiber is a salaried employee, not a partner, in Broad and Cassel and does not share in the firm's profits.

First Assistant County Attorney Murray Greenberg said Ginsburg issued an opinion in March 1983 in answer to a question from Schreiber about whether he could vote when lawyers from Broad and Cassel represented clients before the commission.

The county attorney's answer was yes, based on a state law that says an elected official can vote on any matter as long as he files a statement setting forth his interest.

Since Schreiber does not share in the firm's profits, he may not have needed make public his connection with Broad and Cassel, Greenberg said. "I don't know whether he would have had to file a statement. He clearly could have voted," he said.

U.S. Sen. Thomas Eagleton, the ranking Democrat on the Senate committee, said even if the votes are legal, they were unethical. He said members of the postal board, which sets policy for the 700,000-employee organization, must be above reproach.

"This position requires ethical standards above suspicion," the Missouri senator said Thursday. "Mr. Schreiber flunks that test."

AGRIPOST VENTURE

The Agripost saga reaches back to 1980, when the county entered a contract with the company for construction of a garbage-composting plant.

In 1983, the company decided to go forward with a financing plan for the plant that needed the commission's approval. The county would have bestowed tax-exempt status on the bonds and it would have owned the plant, and leased it back to Agripost.

Lobbyist Eston Melton was hired to help them. In March and April, Melton set up appointments with Mayor Steve Clark to discuss the booding proposal.

Around June 1983, Agripost hired Broad and Cassel to help the company build the plant.

Agripost President Ed West said the fact Commissioner Schreiber had joined the law firm the month before played no part in the company's decision to hire Broad and Cassel.

Though Agripost already had lawyers—the law firm of former attorney general Robert Shevin—it wanted as much legal expertise as possible because it hoped to convince the Metro Commission to authorize a $17 million tax-exempt bond issue to build the plant.

On May 25, the company ran into a wall when the Dade Industrial Development Authority recommended against approval of the bonds. Roger Barreto, IDA chairman, said in a May 26 memo that the company did not have a financial track record or enough assets to ensure it could repay the bond holders if it defaulted.

APPEAL SUCCEEDS

On June 7, 1983, Agripost appealed the IDA's ruling to the county commission, which voted for the bonds, 7-1, with Commissioner Beverly Phillips dissenting. Schreiber was absent for the vote.

Through the summer, county bond counsel said they tried to make the deal work. But because the project was untried, Metro's bond counsel—the national law firm of

Morgan Lewis and Bockius—repeatedly raised questions about whether it was feasible.

George Davis, of Morgan Lewis' Philadelphia office, said the bond counsel's duty is to issue an opinion that explains to potential investors all the possible risks of the project. If the project goes bust, investors can sue both the company, the county and the bond counsel for fraud if it is determined that important information was omitted from the bond opinion.

Davies said he had difficulty getting information from Agripost concerning the feasibility of the project. For instance, company officials maintained that the plant would be able to break down old refrigerators for conversion into compost.

"I was told. 'No problem, it will make dirt out of them.' but I couldn't get verification." Davies said.

Later, a company study showed that it couldn't grind up refrigerators.

The haggling between Agripost and Morgan Lewis went on for months. County officials were concerned that the project would go bust.

West said Morgan Lewis had become "too conscientious," asking for more details than were necessary. "They were sticking their nose in the business affairs, and they should have stuck to the legal issues."

On Nov. 1, 1983, against the advice of the development authority, the commission approved the Agripost bond issue on a 6–0 vote. Schreiber did not say during the meeting that Agripost was a client of Broad and Cassel.

"I had gotten an opinion from the county attorney that I could vote on these matters." Schreiber said. "Once you announce something like that, all you do is call attention to a problem that the county attorney said doesn't exist.

"I would venture to say that I've voted against as many clients of Broad and Cassel that come before the commission as I have for them."

Because of the problems raised by Morgan Bockius, Agripost was unable to issue bonds before the end of 1983. Starting in 1984, new federal laws made it impossible for the Agripost deal to be completed.

"I don't blame it all on Morgan Bockius," West said. "But I think if they acted quickly, we could have gone forward."

"If the charge is that we were too zealous, we plead guilty," said Morgan Lewis lawyer Richard Pettigrew, who is also chairman of Dade's Democratic Party. "We didn't represent Agripost. We represented the public."

NEVER GOT PAID

Pettigrew noted that because bond counsels are paid from bond proceeds, Morgan Lewis never was paid the $115,000 in fees for its work on Agripost. Broad and Cassel and Shevin's firm are also owed "tremendous amounts of money," West said.

On Nov. 21, the Metro Commission voted 2–1, with Schreiber absent, to replace Morgan Lewis as one of the county's five bond counsels with the firm of Broad and Cassel.

Commissioner Jim Redford, who made the motion, said among his reasons for firing Morgan Lewis was its handling of the Agripost bond issue.

Norman Broad, senior partner in Broad and Cassel, declined to comment Thursday.

After the commission's decision to fire Morgan Lewis and to hire Broad and Cassel, Schreiber, who did not vote in that case, said the commissioners had problems with the way Morgan Lewis handled the Agripost deal.

"We weren't looking for bond counsel to kill deals; we were looking for them to make them. If the commission says it wants to do a project, we look to the counsel to tell us how it *can* be done," Schreiber said.

The second vote that will be an issue at today's congressional hearing occured just two months ago.

On Oct. 3, 1985, Barry Kutun, who identified himself as a lawyer with the firm of Broad and Cassel, appeared on behalf of a developer Scott Estate Homes for permission to build 53 homes on property zoned for 38 homes. The property is located on 8.9 acres at SW 160th St. across from Colonial Drive Elementary School.

Several homeowners objected, and the zoning change was opposed by the county's Zoning Appeal Board, the county's zoning department, and officials with the school board.

Schreiber voted in favor of the zoning change, which passed by a 4–2 vote. He did not announce his relationship with the law firm.

"It's the same thing as with the bond counsels," Schreiber said. "I have no financial interest."

Alan Brody, a homeowner and lawyer who represented the homeowners opposing the developer in this case, said Schreiber should have announced his connection with Broad and Cassel.

Brody said the homeowners objected because of worries about increased traffic and because similar zoning had been previously turned down.

A CHRONOLOGY OF EVENTS

Spring 1983: Agripost, a recycling company, hired lobbyist Eston Melton to win county commission approval for a financing plan for the plant.

May 1, 1983: Broad and Cassel hired Schreiber to generate business and do public relations for the firm.

May 25, 1983: Dade Industrial Development Authority recommended against approval of Agripost's bond proposal on the grounds that the company did not have a financial track record or assets to ensure it could repay the bond holders if it defaulted.

Around June 1983: Agripost hired the firm of Broad and Cassel to help the company build the plant.

June 7, 1983: Agripost appeals to the commission, which overrules the IDA and approves Agripost's bond proposal. Schreiber was absent for the vote.

Nov. 1, 1983: Commission again votes for the bonds, 6–0. Schreiber, who voted for the plan that day, did not say during the meeting that Agripost was a client of Broad and Cassel.

November and December 1983: Agripost was unable to sell the bonds. Starting in 1984, new federal laws made it impossible for the Agripost deal to be completed.

Jan. 9, 1985: The county attorney issues an opinion that hiring Broad and Cassel as bond counsel would not be a conflict of interest for Schreiber.

Oct. 3, 1985: Schreiber voted for the proposal of a developer represented by a lawyer with Broad and Cassel.

Same day: President Reagan nominated Schreiber to serve on the 11-member board that governs the U.S. Postal Service.

Nov. 21: Metro Commission voted 2–1, with Schreiber absent, to replace Morgan Lewis as one of the county's five bond counsels with the firm of Broad and Cassel.

[From the Miami Herald, Dec. 13, 1985]

FLEDGLING WASTE-CONVERSION FIRM BLAMES SLOW START ON BOND LAWYER

(By Neil Brown)

Eight years after Agripost Inc. formed, it is still in the development stage.

That frustrates company President Ed West, who says proudly that there may be no other private enterprise with the potential of serving the public like Agripost's yet-to-be built ConvertitII system.

Agripost is a five-employee Pompano Beach company that wants to build a plant to convert garbage into fertilizer.

The company was founded in 1978 by West, who is an engineer, and Paul Faske, who died in July.

In 1983, Agripost made its most serious bid to obtain financing to get the plant started. It applied to the county for permission to issue $17 million in tax-exempt bonds.

Under the plan, the county was going to pay Agripost $8.25 a ton for taking some garbage off the county's hands. Agripost then was to process the solid waste through a composting method, turning it into fertilizer.

The company wanted to use the fees paid by the county, plus revenue from the sale of fertilizer to pay off the bonds issued to build the plant. Eventually investors would make make money and the county would have another means of disposing of garbage.

To help Agripost find its way into the offices of powerful Metro officials, company executives hired lobbyist Eston Melton. Said West: "When you go on a trip, you take a road map."

George Davies, a lawyer with Morgan Lewis and Bockius, the county's bond counsel on the Agripost deal, said Agripost's financing strategy was to issue bonds in $5,000 denominations to make them more attractive to individual investors, rather than large banks that buy bonds in greater quantities.

As a result, the bond counsel and the county's financial experts scrutinized the project to see that less sophisticated small-time buyers understood the risks in-

volved. The primary risk, Davies said, was that Agripost had never built such a plant and had no track record.

Because of the high risks, the county's Industrial Development Authority advised against the bond issue.

Nonetheless, the Metro Commission sided with Agripost. And to help make the project more economically viable, the commissioners agreed to pay Agripost $14 a ton to take away garbage instead of the $8.25 a ton.

But issuing bonds still required the favorable opinion of the county's bond counsel. The opinion had to be issued before Jan. 1, 1984, when federal law changes eliminated the type of bond issue involving Agripost.

But Davies, the county's bond lawyer, was not convinced that Agripost had provided enough information detailing the risks. If the bonds had gone sour, he said, the county could have been sued for fraud for not disclosing all the risks.

West said all the information necessary was provided. He said Davies meddled in nonlegal matters, including environmental issues, causing delays in making the deal.

Time ran out. The bonds were never sold.

"We were severely damaged by that whole scenario," West said.

The company lost about $1.5 million because the deal didn't go through. West estimated.

Agripost has yet to make money, averaging yearly deficits of several hundred thousand dollars. In 1984, its end-of-the-year deficit was $1.1 million. In 1983, the deficit was $551,000, according to annual reports. And the failure to issue bonds forced Agripost to give up on a deal to buy 12 acres near the airport.

But the company is still kicking. It has a letter of intent with the government of the People's Republic of China to build a plant, possibly near Canton. Environmental concerns about the fertilizer have been answered, West said, and he still believes that a plant will be built, because "there's an overriding public interest."

Among the reasons for the firm's troubles, West said: "There were too many damn lawyers."

[From the Miami Herald, Dec. 13, 1985]

Five Influential Law Firms Split Up a Lucrative Pie

(By Celia W. Dugger)

Doing the legal work on county bond issues—variously described as a money machine and a gravy train—has been divvied up between five of the county's most influential law firms.

It was the county's decision to give a slice of this work to Broad and Cassel, a firm that employs County Commissioner Barry Schreiber, that touched off the series of allegations of conflict of interest.

For years, the county simply relied on a major New York firm—Brown, Wood, Ivy, Mitchell & Petty—to do the work. But in 1982 the county commission decided to rotate the work among local firms.

It was a "Lawyers' Relief Act" that has meant big legal fees without much work, according to Parker Thomson, a lawyer who opposes the new policy.

Twenty-three firms wanted to get on what Commissioner Jim Redford called the "gravy train" in 1982, but the commission decided to narrow the list.

The five local firms that won were Greenberg, Traurig, Askew, Hoffman, Lipoff, Rosen and Quentel; Fine Jacobson Schwartz Nash Block & England; Myers Kenin Levinson Ruffner Frank & Richards; and Sparber Shevin Shapo and Heilbronner. A national firm—Morgan Lewis & Bockius, with a local office where Richard Pettigrew, former Dade County Democratic Party chairman, is a partner—was also chosen.

Morgan Lewis was dumped last month to make way for Broad and Cassel, a firm that pays Schreiber to generate business. Schreiber did not vote on the decision and the county attorney has ruled that since Schreiber gets a flat fee from the firm instead of getting a percentage of the profits, the arrangement is not legally a conflict of interest.

The local firms were also required to associate with a national firm with bond expertise because New York bond underwriters were nervous about having legal work on millions of dollars worth of bonds approved by local law firms. Unlike most public services, bond lawyers are not selected through price competition. Because

they provide a special service, the county negotiates a fee that is a percentage of the value of the bond issue.

There is no record of whether the local or the national firm does the work or how they split the fees. Since the county implemented its new policy, it has paid at least $2 million in legal fees on $1 billion in bond issues.

State law specifies that bond issues be approved by a circuit judge, who considers whether the bonds are being issued for a "valid" public purpose. The work on this validation process is usually handled by the county attorney's office.

Then the outside bond counsel must issue an opinion saying that the bonds qualify to be tax exempt. Because the interest investors earn on the bonds is tax-exempt, the bonds carry a far lower interest rate.

The risk to the law firm comes if something goes wrong and the bonds are not tax exempt: The bond counsel can be sued. The judge's ruling, however, lessens the chance that the lawyers would be liable.

The firms have also earned substantial fees from their work for four Dade authorities, which finance hospitals, industrial development, housing and educational facilities. The authorities are required to use the same five firms the county does.

Since 1983, the four authorities have issued more than $860 million in bonds, but there is no public record of the fees, which are paid by the private groups that get the financing.

[From the Miami News, Dec. 21, 1985]

Flap Over Schreiber Postal Board Bid Surprises Many

(By Robert Joffee)

What was the *real* reason for the flap concerning Barry Schreiber's nomination to a position hardly anybody cares about? What was it about a Dade commissioner that got the goat of Democrat Thomas Eagleton, himself once a nominee for vice president?

Several U.S. Senate staffers say they were surprised when a political plum for a minor-league Reagan supporter in Miami encountered major opposition from the senior senator from Missouri.

They also were a little surprised when senators from other unlikely places—such as Delaware, Massachusetts, Michigan and Tennessee—were bombarded with calls favoring or opposing the plum: a seat on the U.S. Postal Service Board of Governors for Schreiber.

Interviews with Senate staffers, politicians, political fund-raisers and political activists—some in Dade County and some in the District of Columbia, some insisting on anonymity—produced at least some of the answers to those questions:

Dade Republican Chairman Jeb Bush, son of Vice President George Bush, says he personally had recommended Schreiber for a White House plum. He says he contacted the White House's personnel department and its intergovernmental affairs office to urge that Schreiber, a Democrat, be rewarded "because of his support for Reagan in 1980 and 1984."

President Reagan's nomination of Schreiber provoked the ire of at least one Washington heavyweight, because the $10,000-a-year seat on the Postal Service Board of Governors was a *Democratic* plum, which by law had to go to a Democrat, and because the White House was attempting to give it to a Democrat for Reagan. That explanation was provided by one Democratic national committeewoman from Florida who declined to be named or to name the heavyweight.

The committeewoman says the heavyweight called her and told her he wanted to block the Schreiber nomination but needed "something more," something non-political "worth investigating." He told her Schreiber's support for Reagan would not be sufficient to nix the appointment.

The committeewoman, who admitted she is strongly opposed to *any* plums for Schreiber, says she urged the heavyweight to call Dade Democratic Chairman Richard Pettigrew, whose law firm had lost its lucrative role as a county bond counsel to Schreiber's firm.

Pettigrew not only was contacted, but he was interviewed. He says he was questioned for at least 90 minutes—over lunch at The New Market restaurant in the Pavillon Hotel—by Governmental Affairs Committee staffers Howard Shapiro and Fred Asselin, who had flown here from Washington to investigate Schreiber.

Pettigrew says he told Shapiro and Asselin everything he knew about what Eagleton later characterized as a "conflict of interest" between Schreiber's role as a

voting member of the Metro Commission and his job as an attorney with Broad & Cassel.

Broad & Cassel, in addition to serving as a county bond counsel, represents clients before the commission. Schreiber denies that he, as a result, has any conflict.

In any case, on Dec. 13, the alleged conflict was the principal subject of a four-hour confirmation hearing by the Senate Governmental Affairs Committee.

Eagleton, who asked most of the questions, later said it was "certainly the longest confirmation hearing that's ever been held for a postal service governor."

Although Schreiber produced memos in which County Attorney Robert Ginsburg said Schreiber's dual role would not violate the county's conflict-of-interest statute, Eagleton declared he would "totally and irrevocably oppose this nomination at every juncture."

After that hearing, Schreiber began soliciting support from Democrats who had raised money in Dade for the campaigns of various out-of-state U.S. senators.

Three of the fund-raisers, each of whom had raised tens of thousands of dollars for non-Florida Senate candidates, say they gave Schreiber what he wanted. The three, all of whom insisted on anonymity, say the senators they contacted included Carl Levin, D-Mich., William Roth, R-Del., Albert Gore, D-Tenn., and Edward Kennedy, D-Mass.

However, two of the fund-raisers say their verbal support for Schreiber was less than enthusiastic. One said he told senators that Schreiber should be nixed only if they believed the alleged conflict was "really serious." The other said he balked because Schreiber was pushing too hard and because, with Eagleton's opposition, the Senate as a whole probably wouldn't vote on the matter this year anyway.

Schreiber's detractors, meanwhile, were making calls of their own. One went to Kim Moran, a Democratic national committeewoman from Roseville, Mich.

Moran, who had worked in Florida for the 1984 Democratic presidential campaign of former Vice President Walter Mondale, quickly recalled that many Democrats in the condominium neighborhoods of Northeast Dade had received letters in which Schreiber urged them to vote for Reagan. When she was told about the proposed plum for Schreiber, she says, *"I* called Senator Levin and gave him *my* reaction."

"There was a lot of lobbying both ways," says Levin aide Linda Gustitus.

[From the Miami Herald, Dec. 22, 1985]

Dade Conflict Code Hard to Violate

(By Neil Brown)

Dade's conflict-of-interest law is virtually indestructible, its critics say. No matter what some county officials and employees do, they can't break it.

Metro officials have accepted free trips to the Super Bowl and to Europe. Commissioner Barry Schreiber has cast votes that benefited clients and lawyers associated with the law firm that pays his salary. Metro Aviation Director Dick Judy advocated building a regional jetport near land part-owned by his wife.

It's all legal, says County Attorney Robert Ginsburg.

The law was first adopted in 1972. It's designed to prevent county officials and employees from misusing their public positions for private gain, and from participating in private activities that conflict with their ability to do their jobs impartially.

But rarely has anyone ever been prosecuted, no one has ever been jailed and the chief of the legal division of the state attorney's office, Richard Shiffrin, candidly admits that he didn't even know the law existed.

"It's been a Swiss cheese law, full of holes," said Dan Paul, a lawyer who wrote the county's charter in 1958 and chaired a Miami charter review committee in 1982. "It's much too loose. As a result, it gives the county attorney and the county commissioners a great deal of leeway."

At the first county commission meeting in 1986, commissioners will consider a revision of the law.

Walter Dartland, the county's consumer advocate, has chaired a task force of county officials established a year ago to study possible revisions. Dartland proposed a far-reaching reform of the 13-page law based on one in Montgomery County, Maryland. The committee, however, decided to limit the review to one 21-line section dealing with gifts.

Currently, the county's ordinance prohibits any county officials or employees from accepting any gift, including money, travel, entertainment which valued at more

than $25 which could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him . . ."

In 1977, the Florida Supreme Court ruled that similar language in the state's conflict-of-interest ordinance was unconstitutional because it was too vague.

Said Paul: "No one knows what it means."

Although the court ruled eight years ago, Dade never changed the language of its ordinance. Since then, officials have accepted free trips, including one to Paris. And two Metro commissioners accepted free trips to the Super Bowl paid for by Miami Dolphins owner Joe Robbie, who subsequently asked the commission to approve his new football stadium development.

Said Ginsburg: "These trips were not intended to influence anybody. We're not talking about $1,000 in a brown paper bag. We look at the circumstances of each case. If there is a legitimate county purpose, we're less likely to find that it runs afoul of the ordinance."

Dartland warns that such gifts can be a subtle attempt "to grease the skids for the future. It's not overt, but it influences you."

RULES SPELLED OUT

The revision under consideration is more specific. Officials and employees would be prohibited from accepting anything from anyone who is "doing or seeking to do business of any kind" with the county. Gifts also are prohibited from anyone who "is an applicant or participant for any benefit or is engaged in activities which are regulated or controlled" by the county. And anyone with "financial interests which may be substantially and materially affected . . . by the performance or nonperformance of an official duty" cannot prosper.

Under the proposed new law, the Super Bowl trip would have been illegal because Robbie needed commission zoning approval for the stadium.

"If you're going to be doing any kind of business with the county, then there's a conflict," Dartland said. "This is a cleaner, better way of doing it. It's really important to maintain credibility.

Unlike the current law, the new proposal spells out specific exceptions including:

Occasional meals and beverages.

Unsolicited gifts of insignificant monetary value.

Tickets or free admission to a charitable, cultural civic or sports events where the tickets are a courtesy extended to the entire public office.

Those calling for reform, including Paul and Commissioner Beverly Phillips, say gifts aren't a serious problem. It's appropriate for top county officials to attend a national event like the Super Bowl and represent the county, they say.

Other problems with the law needed more attention, critics say.

County commissioners and employees frequently ask County Attorney Ginsburg for a legal opinion before they act. Ginsburg bases his legal opinions strictly on the facts presented to him, he said. He does not question those facts or investigate their validity.

"If someone has not given us the full facts, our opinion is essentially worthless," he said.

Ginsburg himself may have a conflict issuing opinions at the request of county commissioners who are his bosses.

Said Phillips: "It's always difficult to tell a county commissioner 'No.' We're always asking him how we can do what we want to do legally." Ginsburg said his opinions are not subjected to employer-employee pressures.

The law does not adequately spell out certain conflicts that should be avoided, nor does it specify what is an "indirect financial interest."

"It's too easy to give a liberal interpretation." Paul said. "The real intent of this law is to prevent someone from serving two masters. You can't be operating in the public interest and serve your own private interests, too."

STATE CODE APPLIES

County and city officials also must abide by the state's Ethics Code and can be investigated by the state Ethics Commission.

The state's conflict of interest law also is evolving and has been criticized as too weak. The state commission can only investigate when a specific complaint is made. The penalties are usually fines, because the law has been decriminalized.

Since the ethics law underwent a major overhaul in 1974, no one has ever been subjected to the maximum penalty of removal from office as a result of a conflict of interest, according to Larry Gonzalez, executive director of the Ethics Commission.

Up until last year, the state law allowed public officials to vote on matters in which they had a conflict of interest as long as they filed a document disclosing the conflict.

To improve local enforcement, Dartland proposes that Dade create a county ethics commission made up of civic leaders, which could hear ethics cases and mete out penalties. Such a panel—independent of the county commission—has worked in Montgomery County, Maryland, he said.

Paul also is drafting a new conflict-of-interest proposal, because he said violations "cause a great deal of disrespect for Metro-Dade government."

But Gonzalez, of the state Ethics Commission, said laws can't protect against the perception that a conflict of interest exists.

"Appearances are left to the judgment of the official," he said. "The electorate ultimately decides at the ballot box what it thinks of that judgment."

Phillips said a new law won't stop people from breaking it.

"The problem isn't with the law, it's with us," she said. "You can't legislate ethics."

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